

1 Co-Introduced by Council Members Pittman, Freeman and Dennis and Co-
2 Sponsored by Morgan, Hazouri, Carlucci, Gaffney, Becton, Boylan,
3 DeFoor and Jackson and Substituted and Amended by the Finance
4 Committee and Amended on the Floor of Council:
5

6 **ORDINANCE 2021-117-E**

7 AN ORDINANCE AMENDING CHAPTER 24 (FINANCE AND
8 ADMINISTRATION DEPARTMENT), PART 6 (PROCUREMENT
9 DIVISION), SECTION 24.605 (EQUAL BUSINESS
10 OPPORTUNITY OFFICE FUNCTIONS), *ORDINANCE CODE*;
11 AMENDING CHAPTER 126 (PROCUREMENT CODE), PART 1
12 (GENERAL REGULATIONS), SECTIONS 126.102
13 (DEFINITIONS) AND 126.114 (BUY AMERICAN
14 PREFERENCE IN CONTRACTS FOR GOODS), *ORDINANCE*
15 *CODE*; AMENDING CHAPTER 126 (PROCUREMENT CODE),
16 PART 2 (SUPPLIES, CONTRACTUAL SERVICES, AND
17 CAPITAL IMPROVEMENTS), SECTION 126.201
18 (GENERAL), *ORDINANCE CODE*; REPEALING CHAPTER 126
19 (PROCUREMENT CODE), PART 6A (SMALL BUSINESS
20 CAPITAL, BONDING, AND OUTREACH PROGRAM) AND PART
21 6B (JACKSONVILLE SMALL EMERGING BUSINESS
22 PROGRAM), *ORDINANCE CODE*; CREATING A NEW CHAPTER
23 126, PART 6 (JACKSONVILLE SMALL AND EMERGING
24 BUSINESS PROGRAM), SUBPART A (GENERAL
25 PROVISIONS), SUBPART B (PROGRAM
26 ADMINISTRATION), SUBPART C (PROGRAM SUPPORT
27 SERVICES; MARKETING AND OUTREACH; DISPARITY
28 STUDY UPDATE), SUBPART D (PROGRAM ELIGIBILITY,
29 PROCEDURES, AND OTHER REQUIREMENTS); CREATING A
30 NEW SECTION 111.610 (JSEB ACCESS TO CAPITAL

1 PROGRAM TRUST FUND), PART 6 (ECONOMIC AND
2 COMMUNITY DEVELOPMENT), CHAPTER 111 (SPECIAL
3 REVENUE AND TRUST ACCOUNTS), *ORDINANCE CODE*;
4 PROVIDING FOR A TEMPORARY SUSPENSION OF THE JSEB
5 ADMINISTRATOR'S AUTHORITY TO DECERTIFY A JSEB
6 DUE TO NONCOMPLIANCE WITH THE JSEB PROGRAM
7 ELIGIBILITY CRITERON CONTAINED IN SECTION
8 126.613(C)(2), *ORDINANCE CODE*, PERTAINING TO
9 PERSONAL NET WORTH LIMITATIONS; REPEALING
10 ORDINANCE 2019-759-E (AN ORDINANCE APPROVING AND
11 ADOPTING REVISED UNDERWRITING GUIDELINES FOR THE
12 JSEB ACCESS TO CAPITAL PROGRAM TO CLARIFY PRE-
13 QUALIFICATION CRITERIA AND REQUIRED
14 DOCUMENTATION); PROVIDING FOR CODIFICATION
15 INSTRUCTIONS; PROVIDING AN EFFECTIVE DATE.

16
17 **WHEREAS**, the City of Jacksonville ("City") determined in 2004
18 that growing Jacksonville small and emerging businesses ("JSEBs") was
19 beneficial to the City and its individual residents; and

20 **WHEREAS**, to that end, the City devised the Jacksonville Small
21 Emerging Business Program (the "Program") to address several concerns
22 that were found to impede the growth of small businesses, including
23 bonding issues, access to capital, training, city procurement
24 barriers, and lack of resources for growth; and

25 **WHEREAS**, a Special Committee on the Jacksonville Small &
26 Emerging Business ("Special Committee") was established in August
27 2020 to review the Program and make improvements and recommendations
28 to the Program supported by evidence, disparity studies, and
29 applicable federal and state law; and

1 **WHEREAS**, the Special Committee held multiple meetings and heard
2 from various guest speakers and presenters, including JSEB vendors,
3 prime contractors, the City's Procurement Division, other interested
4 parties, and the public; and

5 **WHEREAS**, a copy of the Special Committee's Final Report is
6 attached hereto as **Exhibit 1**; and

7 **WHEREAS**, based on the Special Committee's review of the Program,
8 the City desires to further improve certain aspects of the Program
9 to better assist JSEBs in growing and graduating from the Program;
10 now therefore

11 **BE IT ORDAINED** by the Council of the City of Jacksonville:

12 **Section 1. Amending Chapter 24 (Finance and Administration**
13 **Department), Section 24.605 (Equal Business Opportunity Office**
14 **Functions), Ordinance Code.** Chapter 24 (Finance and Administration
15 Department), Part 6 (Procurement Division), Section 24.605 (Equal
16 Business Opportunity Office Functions), *Ordinance Code*, is hereby
17 amended to read as follows:

18 **CHAPTER 24 - FINANCE AND ADMINISTRATION DEPARTMENT**

19 * * *

20 **PART 6. PROCUREMENT DIVISION**

21 * * *

22 **Sec. 24.605. - Equal Business Opportunity Office functions.**

23 The Equal Business Opportunity Office ("EBO Office") is hereby
24 an office under the Procurement Division, and the responsibilities
25 set forth below shall be managed by the JSEB Administrator. All
26 employees within the EBO ~~office~~ Office shall be responsible for
27 deployment and administration of Chapter 126, Part 6, and shall:

28 * * *

29 (f) Provide support services to assist ~~certified vendors~~ JSEBs
30 in their efforts to secure training, bonding and access to

1 capital pursuant to Chapter 126, Parts ~~6A and 6B~~, Ordinance of
2 the Code;

3 (g) Provide annual training, ~~together~~ in consultation with the
4 Chief of Procurement, to department heads and divisions chiefs,
5 or their designees, and applicable staff of City boards and
6 commissions pursuant to Chapter 126, Part ~~6B~~, Ordinance of the
7 Code; and

8 * * *

9 **Section 2. Amending Chapter 126 (Procurement Code), Part 1**
10 **(General Regulations), Sections 126.102 (Definitions) and 126.114**
11 **(Buy American Preference in Contracts for Goods), Ordinance Code.**
12 Chapter 126 (Procurement Code), Part 1 (General Regulations),
13 Sections 126.102 (Definitions) and 126.114 (Buy American Preference
14 in Contracts for Goods), *Ordinance Code*, are hereby amended to read
15 as follows:

16 **CHAPTER 126 - PROCUREMENT CODE**

17 * * *

18 **PART 2. PROCUREMENT DIVISION**

19 * * *

20 **Sec. 126.102. - Definitions.**

21 As used in this Chapter:

22 * * *

23 (h) Local bidder means a bidder who maintains a permanent place of
24 business in the City and is a separate and distinct term from that
25 used in Part ~~6A and 6B~~, herein, which contains differing
26 requirements. If, with respect to a purchase or contract, there
27 shall be no local bidder within the City, the term local bidder
28 shall include a bidder whose principal office is located in and
29 whose principal business is conducted in the State of Florida.

30 * * *

1 **Sec. 126.114. - Buy American Preference in Contracts for Goods.**

2 * * *

3 (b) *Exemptions.* The provisions of this section do not apply to:

4 * * *

5 8. Contracts awarded pursuant to the Jacksonville Small and
6 Emerging Business Program, as provided in Chapter 126, Part 6B,
7 ~~Chapter 126~~, Ordinance of the Code, including those contracts
8 where a low bidder is a prime JSEB contractor on a non-set aside
9 bid.

10 * * *

11 **Section 3. Amending Chapter 126 (Procurement Code), Part 2**
12 **(Supplies, Contractual Services, and Capital Improvements), Section**
13 **126.201 (General), Ordinance Code.** Chapter 126 (Procurement Code),
14 Part 2 (Supplies, Contractual Services, and Capital Improvements),
15 Sections 126.201 (General), *Ordinance Code*, is hereby amended to read
16 as follows:

17 * * *

18 (b) *Bid bond and/or security.* Except as otherwise provided
19 herein, all bids under this Part 2 shall be submitted in sealed
20 form to the Chief, who may require that each bid be accompanied
21 by a bid security in the form of a certified or cashier's check
22 or bid bond in the amount as shall be prescribed in the
23 invitation for bid. The purpose of bid security is to discourage
24 the withdrawal of bids, to encourage that bidders comply with
25 the instructions and/or requirements of the invitation for bids,
26 and that the apparent low bidder will enter into a binding
27 contract to perform the work in accordance with the bid documents
28 and the apparent low bidder's bid proposal. Bid securities
29 ensure that a certain amount of money will be paid in the event
30 that an apparent low bidder fails to abide by the instructions

1 and/or requirements of the invitation for bids or fails to enter
2 into a formal contract pursuant to the same. As such, unless
3 otherwise permitted by the Chief, bid securities shall not be
4 discharged until a contract has been executed and a performance
5 bond accepted in lieu of the bid securities. In lieu of the
6 furnishing of surety with each individual transaction, bidders
7 who regularly do business with the City shall be permitted to
8 file with the Chief an annual or continuing bid bond in an amount
9 established by the Chief. For projects with a value under
10 \$500,000: (i) bid bonds shall not be required for ~~certified~~
11 ~~JSEBs and MBEs (which, by definition in 6B, includes minority~~
12 ~~and women-owned businesses)~~, as defined in Chapter 126 Part 6;
13 and (ii) the Chief shall have the discretion to waive the
14 requirement for bid bonds where there is a written determination
15 that the imposition of a bid bond may detract from competition
16 without adding a material benefit to the City.

17 * * *

18 (g) *Formal contract.* The Mayor may require the successful bidder to
19 promptly execute a formal contract approved as to its form, terms and
20 conditions, and legal sufficiency by the Office of General Counsel
21 and to execute and deliver to the Chief a good and sufficient payment
22 and/or performance bonds in a form approved by the Office of General
23 Counsel, in an amount equal to 100 percent of the contract price of
24 a capital improvement project and in an amount established by the
25 Chief for all other projects, subject to the discretion of the GGAC
26 or as otherwise provided herein, and executed by a surety company
27 authorized to do business in Florida; however, a successful bidder
28 who is awarded a formal contract for equal to or less than the
29 discretionary threshold payment and performance bond exemption
30 amounts indicated set forth in F.S. § 255.05(1) (a), Florida Statutes,

1 ~~for a county, city, political subdivision, or public authority, or~~
2 ~~such higher amount as may be permitted by law (the "Statutory~~
3 ~~Discretionary Bond Threshold")~~, may, at the discretion of the GGAC,
4 upon the request of the using agency and recommendation of the Chief,
5 be exempted from executing the otherwise required payment and
6 performance bonds. Final determinations on the need for payment bonds
7 for projects equal to or less than the Statutory Discretionary Bond
8 Threshold shall be made by the Chief after determining if there is
9 an alternate form of security or payment method more readily available
10 or appropriate. Formal contracts shall not be executed and notices
11 to proceed shall not be issued for projects, on which successful
12 bidders are required to provide and/or have not been exempted from
13 providing payment and performance bonds, until such time as the
14 requisite payment and performance bonds have been furnished by the
15 successful bidder. The successful bidder's failure to execute the
16 formal contract and to secure the payment and performance bonds and
17 return the same to the City within the time period set forth in the
18 invitation for bids may result in the successful bidder's forfeiture
19 of the award and forfeiture of the bid security to the City. The
20 award may then be made to the next lowest responsive, responsible
21 bidder or re-advertised as the Chief may elect. For ~~certified~~ JSEBs,
22 as defined in Chapter 126, Part 6, payment and performance bonds
23 shall not be required on City projects with a value equal to or less
24 than the Statutory Discretionary Bond Threshold or equal to or less
25 than the payment and performance bond waiver amount permitted in
26 Section 18.11 of the Charter. ~~Final determinations on the need for~~
27 ~~payment bonds for projects under the Discretionary Bond Threshold~~
28 ~~shall be made by the Chief after determining if there is an alternate~~
29 ~~form of security or payment method more readily available or~~
30 ~~appropriate.~~

* * *

Section 4. Repealing Chapter 126 (Procurement Code), Part 6A (Small Business Capital, Bonding, and Outreach Program) and Part 6B (Jacksonville Small Emerging Business Program), Ordinance Code.

Chapter 126 (Procurement Code), Part 6A (Small Business Capital, Bonding, and Outreach Program) and Part 6B (Jacksonville Small Emerging Business Program), *Ordinance Code*, are hereby repealed in their entirety. Copies of the repealed Chapter 126, Parts 6A and 6B, are attached hereto as **Exhibit 2**.

Section 5. Creating a new Chapter 126 (Procurement Code), Part 6 (Jacksonville Small and Emerging Business Program), Subpart A (General Provisions), Subpart B (Program Administration), Subpart C (Program Support Services; Marketing and Outreach; Disparity Study Update), and Subpart D (Program Eligibility, Procedures, and Other Requirements), Ordinance Code. Chapter 126 (Procurement Code), Part 6 (Jacksonville Small and Emerging Business Program), Subpart A (General Provisions), Subpart B (Program Administration), Subpart C (Program Support Services; Marketing and Outreach; Disparity Study Update), and Subpart D (Program Eligibility, Procedures, and Other Requirements), *Ordinance Code*, are hereby created to read as follows:

CHAPTER 126 - PROCURMENT CODE

* * *

PART 6. JACKSONVILLE SMALL AND EMERGING BUSINESS PROGRAM

SUBPART A. GENERAL PROVISIONS

Sec. 126.601 - Legislative Intent. It is the intent of the City in enacting this law to provide a comprehensive and robust program to benefit local small and emerging businesses in the City known as the "Jacksonville Small and Emerging Business Program".

Sec. 126.602 - Legislative Findings.

1 The Council finds and declares that:

2 (1) Several issues impede the progress of small and emerging
3 businesses including, but not limited to, bonding issues, access
4 to capital, education and training, insurance and lack of
5 resources for growth; and

6 (2) Growing Jacksonville small and emerging businesses ("JSEBs")
7 is beneficial to the City and its residents.

8 **Sec. 126.603 - Purpose.** The purpose of the JSEB Program is to support
9 and assist local small and emerging businesses in obtaining direct
10 contracting or subcontracting business opportunities with the City.

11 **Sec. 126.604 - Definitions.** The following words and phrases as used
12 in this Part shall have the following meaning:

13 "*Chief*" shall mean the Chief of Procurement pursuant to Chapter 24,
14 Part 6 of the Code.

15 "*Director*" shall mean the Director of Finance pursuant to Chapter 24,
16 Part 1 of the Code.

17 "*Direct contracting*" shall mean any contract between the City and a
18 JSEB that has been awarded to a JSEB as a prime contractor pursuant
19 to Chapter 126 of the Code.

20 "*EBO Office*" shall mean the Equal Business Opportunity Office
21 established pursuant to Chapter 24, Part 6 of the Code.

22 "*front, broker, or pass-through*" shall mean a JSEB that is not
23 registered as a supplier or distributor through the Florida Department
24 of Revenue, or a JSEB subcontractor who does not self-perform 100
25 percent of the subcontractor work pursuant to the Schedule of
26 Participation, or a JSEB prime contractor who does not self-perform
27 at least 40 percent of the work for the project;

1 "JSEB" shall mean a person or entity certified as a "Jacksonville
2 Small and Emerging Business" pursuant to the requirements set forth
3 in Subpart D of this Part 6.

4 "JSEB Administrator" shall mean the individual responsible for
5 administering and managing the JSEB Program pursuant to Chapter 24,
6 Part 6 of the Code.

7 "micro-business JSEB" shall mean a JSEB who has a personal net worth
8 of \$300,000 or less and is at least a 51 percent majority owner of
9 the business.

10 "Program" shall mean the Jacksonville Small and Emerging Business
11 Program set forth in this Part 6.

12 "Project Specific Goals" shall mean specific JSEB subcontractor
13 participation goals, as set by the JSEB Administrator and Chief of
14 Procurement, that a prime contractor must adhere to in a City awarded
15 contract.

16 "Program Goals" shall mean the goals for the Program set forth in
17 Subpart D herein.

18 "Schedule of Participation" shall mean the bidder/proposer's detailed
19 list of all JSEB and non-JSEB subcontractors from which the
20 bidder/proposer solicited bids or quotations in accordance with
21 Section 126.616 herein.

22 **Sec. 126.605. - Minimum Program Funding Requirement.** Subject to
23 availability of funding, the Program, as provided for in this Part,
24 shall be funded at a minimum of \$500,000, excluding staff, in the
25 annual budget appropriation. A minimum of \$200,000 of such \$500,000
26 minimum funding requirement shall be used to fund the training
27 programs, community outreach and program marketing set forth in
28 Section 126.610 herein.

29 **SUBPART B. PROGRAM ADMINISTRATION**

1 **Sec. 126.606. - JSEB Administrator.**

2 (a) *Responsibilities.* The JSEB Administrator shall administer and
3 manage the Program, including:

4 (1) Implementing, monitoring, and enforcing the rules and
5 regulations of the Program;

6 (2) Unbundling or breaking larger contracts into smaller
7 components where such actions will facilitate competition and
8 provide opportunities under the Program;

9 (3) Providing information and assistance to JSEBs relating to
10 City procurement opportunities, practices and procedures, and
11 bid and proposal specifications, requirements and prerequisites;

12 (4) Certifying businesses as JSEBs and maintaining certification
13 records;

14 (5) Establishing Project Specific Goals after ensuring that
15 adequate JSEBs are available to do the work;

16 (6) Evaluating prime contractors' achievement of Project
17 Specific Goals or Good Faith Efforts (as defined in Section
18 126.618 herein) to meet Project Specific Goals;

19 (7) Working with City departments to ensure prompt payments to
20 JSEBs for work performed in accordance with Section 126.615
21 herein;

22 (8) Receiving, reviewing, and acting upon complaints and
23 suggestions concerning the Program and creating a complaint form
24 as part of this process that identifies both parties;

25 (9) Providing quarterly open houses to answer questions from
26 Program participants or prospective participants regarding
27 Program operations;

28 (10) Posting all contracting opportunities on the Equal Business
29 Opportunity Office website under "JSEB Program";

1 (11) Identifying all JSEBs on the Equal Business Opportunity
2 Office website within three business days of certification;

3 (12) Advertising all pre-bid conferences in applicable JSEB
4 newspapers, direct-mail or e-mail notices to JSEBs, as
5 appropriate, and otherwise seek to increase the interest of all
6 JSEBs certified in the scopes of work of the contract;

7 (13) Providing interested JSEBs with timely, adequate
8 information about the plans, specifications and requirements of
9 the contract to allow them to respond to the solicitation either
10 directly or by referral to the City department seeking the
11 procurement;

12 (14) Maintaining a list of JSEBs and posting such list on the
13 Equal Business Opportunity Office website;

14 (15) Adjusting the annual averaged gross receipts for good cause
15 shown, subject to the appeals procedure set forth in 126.621
16 herein;

17 (16) Performing onsite inspections of the JSEB local offices and
18 business locations; and

19 (17) Facilitating and coordinating all aspects of the Program
20 so as to provide Program participants and prospective
21 participants with a primary Program contact.

22 (b) *Department Training.* Each City department, office or board shall
23 identify to the JSEB Administrator the person with the responsibility
24 of ensuring JSEB participation in such department, office or board.
25 Such person shall receive diversity training and shall prepare
26 quarterly reports to the JSEB Administrator identifying for the three
27 month quarter period the extent of non-JSEB and JSEB participation
28 in any procurement within its department, office or board.

1 (c) *Courtesy Application Reviews and Meeting Conferences.* The JSEB
2 Administrator, or his designee, shall provide courtesy reviews of a
3 small business's JSEB application to confirm whether the application
4 has complied with the requirements of this Part. The JSEB
5 Administrator may conduct such courtesy reviews in person or
6 electronically with the small business upon request and appointments
7 shall be scheduled on a first come, first serve basis as time allows.
8 Additionally, the JSEB Administrator, or his designee, may meet with
9 prospective JSEBs interested in the Program to provide information
10 regarding the Program's support and outreach services available to
11 JSEBs as set forth in this Part.

12 **Sec. 126.607. - JSEB Monitoring Committee; Annual Program Review.**

13 (a) *Establishment; purpose.* There is established a seven-member JSEB
14 Monitoring Committee ("Committee"), to annually review, in
15 consultation with the JSEB Administrator: (i) the status of the
16 Program Goals, including, but not limited to, the percentage, number,
17 and dollar value of contracts awarded to JSEBs through direct
18 contracting and subcontracts; (ii) the training programs, the "AC
19 Program," and the bond enhancement program required herein; (iii)
20 difficulties or accomplishments of the Program; (iv) a comparison of
21 the achievements under the Program compared with the Program Goals;
22 (v) the maximum threshold amounts for personal net worth and annual
23 averaged gross receipts referenced in Section 126.613(c); and (vi)
24 the limitation on the number of program participation years in Section
25 126.613(c) to determine if such amounts and limitation on the number
26 of years are appropriate for the Program. Based on the Committee's
27 required Program review, the Committee may recommend to the Mayor or
28 City Council amendments to the Program in the form of a report.

1 (b) *Composition; appointments.* The Mayor shall appoint three members
2 of the Committee, and the City Council shall appoint four members.
3 The Committee shall be comprised as follows:

4 (1) one non-JSEB contractor who is a professional engineer or
5 architect appointed by the Mayor;

6 (2) one non-JSEB contractor who is a licensed general contractor
7 appointed by the City Council;

8 (3) two JSEB contractors, one appointed by the Mayor and one
9 appointed by the City Council;

10 (4) two private citizens, one appointed by the Mayor and one
11 appointed by the City Council; and

12 (5) one representative from the Northeast Florida Builders
13 Association, Inc., or similar trade association, appointed by
14 the City Council.

15 Members shall serve for three-year staggered terms. The two non-JSEB
16 contractor members must have a current contract with the City or have
17 had a contract with the City in the past. The Mayor shall appoint a
18 Chair and the Chair shall serve until such a time as another Chair
19 shall be appointed by the Mayor. The Mayor and City Council shall
20 strive to reflect the diversity of Duval County in its appointments;
21 each of the seven members shall be confirmed by City Council.

22 (c) *Meetings; applicable laws.* The Committee shall meet quarterly
23 with the JSEB Administrator, who shall then generate a quarterly
24 report for the Mayor and City Council no later than 14 days after
25 each quarterly meeting. The JSEB Administrator, or his designee,
26 shall provide staff support to the Committee. The JSEB Monitoring
27 Committee shall be governed by Chapters 286 and 112, Part 3, *Florida*
28 *Statutes*, and Chapters 50 (Boards and Commissions) and 602
29 (Jacksonville Ethics Code), of the Code.

1 **SUBPART C. PROGRAM SUPPORT SERVICES; MARKETING AND OUTREACH;**
2 **DISPARITY STUDY UPDATE**

3 **Sec. 126.608. - Creation of bond enhancement program.**

4 (a) Subject to the availability of funds, the JSEB Administrator
5 shall competitively procure and maintain annually a contract with a
6 third-party contractor or contractors to provide a bond enhancement
7 program for the benefit of JSEBs. The bond enhancement program shall
8 provide support services to assist JSEBs in their efforts to secure
9 performance and payment bonds for public and private contracts. The
10 program shall not provide the underlying bond but shall provide a
11 refined basis for underwriting bonds, small business support
12 services, and contractor monitoring necessary for such bond
13 underwriting, as well as improvement plans for JSEBs who do not
14 qualify.

15 (b) Section 126.201(b) of the Code provides that JSEBs are not
16 required to submit bid bonds for projects under \$500,000. Section
17 126.201(g) provides that JSEBs shall be exempt from obtaining a
18 payment and performance bond for projects that are (i) equal to or
19 less than the "Discretionary Bond Threshold" amount, as defined in
20 Chapter 126, Part 2 of the Code; and (ii) equal to or less than the
21 payment and performance bond waiver amount permitted in Section 18.11
22 of the Charter.

23 **Sec. 126.609. - Access to capital.**

24 (a) Subject to availability of funds, the City has established the
25 JSEB Access to Capital Program Trust Fund pursuant to Section 111.610
26 of the Code to assist JSEBs with obtaining access to capital (the "AC
27 Program"). The JSEB Administrator, or a third-party contractor
28 engaged through the JSEB Administrator ("Program Manager"), shall
29 manage the distribution of said funds, in accordance with guidelines
30 developed and approved by the JSEB Administrator in order to ensure

1 proper administration and monitoring and to ensure continuity for the
2 program. Such guidelines may be developed and approved by the JSEB
3 administrator without further Council approval. All funds deposited
4 into the Access to Capital Special Revenue Fund shall be the subject
5 of a permanent and continuing appropriation when used for the purpose
6 of loans to assist JSEBs with obtaining access to capital. In the
7 event that the JSEB Administrator, or his designee, serves as the
8 Program Manager of the AC Program, the Mayor, or his designee, is
9 authorized to execute on behalf of the City all loan agreements and
10 related documents authorized pursuant to the AC Program. In the
11 event a third-party serves as the Program Manager, such third-party
12 Program Manager shall act as an agent of the City and is authorized
13 to execute on behalf of the City all loan agreements and related
14 documents authorized pursuant to the AC Program.

15 (b) The JSEB Administrator shall monitor and enforce the contract for
16 disbursing funds and ensure that JSEBs are receiving funding
17 assistance consistent with this Part.

18 (c) The JSEB Administrator, on a quarterly basis, shall provide a
19 report on the activity in the AC Program for the preceding three-
20 month period. Such reports will be posted on the Equal Business
21 Opportunity Office website.

22 (d) The JSEB Administrator or the Program Manager shall host workshops
23 no less than twice a year to inform potential JSEB participants about
24 the AC Program.

25 (e) The JSEB Administrator shall provide a quarterly activity report
26 for the preceding three months to the JSEB Monitoring Committee for
27 its use in complying with the reporting requirements pursuant to
28 Section 126.607 herein.

29 **Sec. 126.610. - Training programs; program marketing; community**
30 **outreach.**

1 (a) *Continuing education, training and mentoring programs.* The EBO
2 Office shall be responsible for developing and implementing
3 continuing education, training, and mentoring programs. Such
4 continuing education, training, and mentoring programs may include,
5 but not be limited to, the following topic areas:

6 (1) Requirements related to doing business with the City;

7 (2) Subcontracting documentation requirements;

8 (3) Accounting for the small business;

9 (4) Construction related contractors and subcontractors,
10 including technology, bidding, bonding, and project management;

11 (5) Key management issues such as cash-flow management, business
12 planning, marketing, accounting, record keeping, and human
13 resources management;

14 (6) Business plans, financial plans and continued education
15 plans;

16 (7) Business profile reviews, to include a SWOT (strength,
17 weakness, opportunities, threats) analysis;

18 (8) Mentoring with veteran JSEBs and/or industry business
19 leaders; and

20 (9) Business development education.

21 Subject to availability of funds, the EBO Office may procure a third-
22 party contractor or contractors, including, but not limited to,
23 educational institutions, to assist with developing and implementing
24 the education, training, and mentoring programs required under this
25 Section.

26 (b) *Program marketing and community outreach.* The Equal Business
27 Opportunity Office shall be responsible for developing and
28 implementing marketing campaigns, recruitment activities, and
29 scholarship programs to increase the number of JSEBs in the Program.

1 Any funds appropriated for such activities shall be inclusive of
2 scholarships. The Equal Business Opportunity Office shall also engage
3 in community outreach by hosting small business program workshops
4 regarding the Program and the support services available to
5 prospective JSEBs. Additionally, the Equal Business Opportunity
6 Office shall survey JSEBs every two years on a survey form approved
7 by the JSEB Monitoring Committee to ascertain what education, training
8 and mentoring programs JSEBs need most. The Equal Business Opportunity
9 Office shall consider such survey results in determining which
10 education, training, and mentoring programs to pursue under this
11 Section.

12 **Sec. 126.611. - Insurance program review.** The City's Risk Manager
13 shall prepare a report on available insurance programs for Florida
14 small businesses and make recommendations regarding methods or
15 programs to assist JSEBs in obtaining requisite insurance. Said report
16 shall be prepared and submitted every six months to the JSEB
17 Administrator. The JSEB Administrator and the City's Risk Manager
18 shall meet quarterly regarding available insurance programs. The
19 JSEB Administrator shall publish a copy of the report on the Equal
20 Business Opportunity Office website.

21 **Sec. 126.612. - Disparity Study Update.** Subject to availability of
22 funds, the Equal Business Opportunity Office shall have completed an
23 update to the 2013 disparity study regarding the City of Jacksonville
24 contracts on or before August 31, 2023. Upon receipt and review of
25 the completed disparity study update, the JSEB Administrator shall
26 provide a report to the Mayor and City Council regarding the analysis
27 and results of the disparity study update.

28 **SUBPART D. - PROGRAM ELIGIBILITY, PROCEDURES, AND OTHER**
29 **REQUIREMENTS**

30 **Sec. 126.613. - Jacksonville Small and Emerging Businesses defined.**

1 (a) All businesses must be certified under the provisions set forth
2 below. Certifications will be granted only in those areas for which
3 the business owner(s) has the ability and expertise to manage and
4 control the firm's operations and work.

5 (b) A JSEB must provide financial statements prepared by a certified
6 public accountant and participate in one or more training, education,
7 or mentoring programs during each 24-month period commencing from the
8 certification date and provide evidence of such to the JSEB
9 Administrator.

10 (c) To be certified as a JSEB, an individual owner must meet the
11 following criteria:

12 (1) Either reside currently in Duval County for a minimum twelve
13 consecutive month period immediately preceding the JSEB
14 application date or have an established business with a
15 principal place of business in Duval County for a minimum
16 eighteen (18) month consecutive period and reside in Duval, St.
17 Johns, Nassau, Baker, or Clay County for one year total within
18 the five County area;

19 (2) Have a personal net worth, excluding personal residence,
20 that is equal to or less than \$1,320,000, such personal net
21 worth to include business value and assets (measured as book
22 value), ownership in other businesses, and all other assets
23 personally owned or held in trust for the individual owner's
24 benefit; provided, however, that, notwithstanding personal net
25 worth, certification hereunder shall require that annual gross
26 receipts, averaged over the immediately preceding three-year
27 period, not exceed \$12,000,000. The averaged annual gross
28 receipts and personal net worth maximum threshold amounts shall
29 be subject to annual analysis by the JSEB Administrator and

1 reviewed by the JSEB Monitoring Committee pursuant to Section
2 126.607 herein;

3 (3) Have not been in the program for a total of more than nine
4 (9) years from the date of the JSEB's first contract as a prime
5 contractor of the City or as a subcontractor retained by a prime
6 contractor of the City, whichever is earlier, provided, however,
7 that participation may be increased by two (2) one-year periods
8 for good cause as determined by the JSEB Administrator;

9 (4) Own and control at least 51 percent of the business entity
10 being certified;

11 (5) Own any license required by local, state, or federal law;

12 (6) Have expertise normally required by the industry for the
13 field for which certification is sought;

14 (7) Be a for-profit small business concern;

15 (8) Not be a front, broker, or pass-through as defined in Subpart
16 A of this Chapter;

17 (9) Perform a commercially useful function typical of the field
18 for which certification is granted;

19 (10) Not be controlled or operate as front by non-JSEB family,
20 former or present employers. Familial relationships where
21 capital is provided for the business will be subject to scrutiny
22 and possible rejection;

23 (11) The JSEB owner(s) contributions of capital or expertise to
24 acquire the ownership interest must be real and substantial; and

25 (12) Be a business, including a sole proprietorship,
26 partnership, corporation, limited liability company, or any
27 other business or professional entity:

28 (i) Which business is at least 51 percent owned by one or
29 more individuals who have held such ownership interests for at

1 least one year and who have each met the criterion in paragraph
2 (c)(1) provided that such business has been in existence for
3 at least one year; and

4 (ii) In the case of a publicly owned business, at least 51
5 percent of all classes of the stock of which is owned by one or
6 more of such persons each of whom meets the personal net worth
7 criteria set forth above; and

8 (iii) Be a citizen or lawfully admitted permanent resident
9 of the United States and be compliant with the residency
10 requirements of this Program.

11 (d) Only a firm that is managed and controlled by a JSEB person(s)
12 may be certified under this Program. The JSEB owner(s) must actually
13 exercise control over the firm's operations, work, management and
14 policy. Indicia of such control are set forth below.

15 (1) A firm must not be subject to any formal or informal
16 restrictions that limit the customary discretion of such
17 owner(s). There can be no restrictions through corporate charter
18 provisions, by-law provisions, contracts or any other formal or
19 informal devices that prevent the JSEB owner(s), without the
20 cooperation or vote of a non-qualifying person or entity from
21 making any business decision of the firm.

22 (2) The JSEB owner(s) may delegate various areas of the
23 management or daily operations of the firm to persons who would
24 not qualify to be JSEBs only if such delegation is typical in
25 the industry for such businesses. Such delegations of authority
26 must be revocable, and the JSEB must retain the power to hire
27 and fire any such person. The JSEB owner must have an overall
28 understanding of, and managerial and technical competence,
29 experience and expertise, directly related to the firm's
30 operations and work.

1 (3) The JSEB owner cannot engage in outside employment or other
2 business interests that conflicts with the management of the
3 firm or prevents the owner from devoting sufficient time and
4 attention to the affairs of the firm to manage and control its
5 activities unless such activities would be appropriate with
6 commensurate businesses, in order to avoid sham or fraudulent
7 certifications.

8 (e) Only an independent firm may be certified as a JSEB. An
9 independent firm is one whose viability does not depend on its
10 relationship with another firm. Recognition of an applicant as a
11 separate entity for tax or corporate purposes is not necessarily
12 sufficient to demonstrate that a firm is independent. In determining
13 whether an applicant is an independent business, the JSEB
14 Administrator will:

15 (1) Scrutinize relationships with non-JSEBs in such areas as
16 personnel, facilities, equipment, financial and/or bonding
17 support, and other resources.

18 (2) Consider whether present or recent family, or
19 employer/employee relationships between the JSEB owner(s) of the
20 applicant compromise the applicant's independence.

21 (3) Examine the applicant's relationships with non-JSEB prime
22 contractors to determine whether a pattern of exclusive or
23 primary dealings with a prime contractor compromises the
24 applicant's independence.

25 (4) Consider the consistency of relationships between the
26 applicant and non-JSEBs with normal industry practices.

27 (5) An owner shall be certified only for specific types of work
28 for which the owner(s) has the ability and expertise to manage
29 and control the firm's operations and work.

1 **Sec. 126.614. - JSEB and Program eligibility.**

2 (a) Only businesses that meet the criteria of the Program may be
3 certified for participation in the Program. The applicant has the
4 burden of persuasion.

5 (b) The certification status of all JSEBs shall be reviewed every
6 twenty-four (24) months from the date of initial certification through
7 a re-certification application. Failure of the firm to seek re-
8 certification by filing the necessary documentation with the Equal
9 Business Opportunity Office within 60 days from the date of receipt
10 of written notification from the Equal Business Opportunity Office
11 may result in de-certification.

12 (c) It is the responsibility of the JSEB to notify the JSEB
13 Administrator of any change in its circumstances affecting its
14 continued eligibility for the Program. Failure to do so may result
15 in the firm's de-certification.

16 (d) The JSEB Administrator shall decertify a firm that does not meet
17 the eligibility criteria.

18 (e) A JSEB may receive no more than five prime contracts set aside,
19 including prime contracts from participation goals, per year or an
20 aggregate total prime contracts set aside per year in the amount of
21 \$4,000,000, which ever is greater.

22 (f) Joint ventures between JSEBs and non-JSEBs are not eligible for
23 the Program, unless they provide structured, detailed, mentoring
24 opportunities, proof of which shall be provided to the JSEB
25 Administrator.

26 **Sec. 126.615. - Jacksonville Small and Emerging Business Program**
27 **Goals; Other Program Directives.**

28 (a) *Program Goals.* The JSEB Program shall be subject to the following
29 Program Goals:

1 (1) *JSEB Contract goals.* The overall small business goal is at
2 least 20 percent, such that the City shall award at least 20
3 percent of total City contracts to JSEBs; provided that such
4 awards do not violate state or federal law and provided further
5 that there are JSEBs to perform the work. The Chief, in
6 consultation with the JSEB Administrator, shall award at least
7 50 percent of the JSEB contracts through direct contracting.

8 (2) *JSEB CIP goals.* The City shall identify a goal of at least
9 20% of its work in its CIP program during the annual budget
10 submission which shall be accomplished with JSEBs, using direct
11 contracting opportunities and subcontracting goals.

12 (3) *JSEB Project Specific Goals.* The Chief upon the
13 recommendation of the JSEB Administrator shall establish Project
14 Specific Goal(s) based on the availability of at least normal
15 industry practice, as determined in consultation with the user
16 department, the availability of at least two JSEBs to perform
17 the functions of those individual contracts and the City's
18 utilization of such to date. Project Specific Goal(s) shall not
19 be set on emergency contracts as defined by City Code or for
20 purchases made in conjunction with the State although JSEBs
21 shall be considered for such single source or emergency
22 procurements if qualified.

23 (b) *Department Program commitments; training.* The City, through each
24 department head, shall commit in its budget to award at least 20
25 percent of its contracts for services, including contractual
26 services, professional services, professional design services,
27 construction services or other services, to JSEBs, provided, however,
28 that such awards shall comply with local, state, and federal law and
29 that there exist JSEBs to perform the work. To assist the City in
30 implementing the Program requirements of this Part, the Equal Business

1 Opportunity Office, through the JSEB Administrator and in
2 consultation with the Chief of Procurement shall provide annual
3 training to department heads and division chiefs, or their designees,
4 and applicable staff of City boards and commissions regarding the
5 JSEB program and the requirements set forth in this Part.

6 (c) *Direct Contracting.* In implementing the Program, the JSEB
7 Administrator shall first provide opportunities for direct
8 contracting. Such opportunities should be created by breaking
9 procurement packages into smaller components, and separating work
10 that requires licenses from that which does not in separate bid or
11 proposal requests where feasible.

12 (d) *Subcontracting.* Opportunities for subcontracting through City
13 awarded non-JSEB prime contractors should be provided within vertical
14 construction projects, with horizontal construction project
15 opportunities being provided to the maximum extent possible by direct
16 contracting. Nevertheless, the subcontracting opportunities shall be
17 provided to those trades typically established as subcontractors.

18 (e) *Joint checks; Semi-monthly payments to JSEBs.* The City may
19 issue joint checks upon the request of the JSEB in order to facilitate
20 bonding, financing, or other requirements of contracting with the
21 City. The City shall pay JSEBs semi-monthly, upon proper payment
22 application to the applicable City department. City departments are
23 to perform all necessary inspections and otherwise endeavor to ensure
24 that prompt review and as applicable approval of JSEB work is
25 completed within four days of receipt of invoice. The City shall pay
26 all approved invoices from JSEBs within three business days of receipt
27 by the Finance and Administration Department. City departments shall
28 provide monthly statements to the Director identifying the timing of
29 JSEB payments for contracts within their departments. These
30 statements are to be organized and provided to the Mayor, with a copy

1 to the City's Chief Administrative Officer ("CAO"), quarterly by the
2 Director. Prime contractors shall be obligated to pay subcontractors
3 within three days of receipt from the City of funds, and must confirm
4 payment to the City. Subcontractors will be notified by the City when
5 a payment application from a prime contractor has been submitted
6 reflecting work performed by a subcontractor.

7 (f) *Micro-business program.* The JSEB Administrator in consultation
8 with the Chief shall be responsible for developing and implementing
9 a micro-business program. The purpose of the micro-business program
10 shall be to ensure that a micro-business JSEB (as defined in Subpart
11 A of this Chapter) has an adequate share of direct contracting and
12 subcontracting opportunities in the Program. Such program may include
13 participation requirements based on tiered levels of personal net
14 worth and annual averaged gross receipts, not to exceed the maximum
15 personal net worth and annual averaged gross receipt amounts set
16 forth in Section 126.613 herein. The JSEB Administrator shall
17 promulgate rules and guidelines regarding such program with further
18 Council approval.

19 **Sec. 126.616. - Contract pre-award compliance procedures.**

20 (a) For all solicitations, the bidder/proposer shall submit a Schedule
21 of Participation detailing all JSEB, and non-JSEB subcontractors from
22 which the bidder/proposer solicited bids or quotations. The entities
23 comprising the JSEB goal of at least 20 percent, or the goals as set
24 forth supra, shall be identified, or the basis for a waiver for good
25 faith efforts shall be provided with the bid or proposal. The lists
26 of JSEBs posted on the City's website establishes the group from
27 which a bidder/proposer must solicit subcontractors under this
28 program. The Schedule of Participation shall be due at the time set
29 out in the solicitation documents.

1 (b) Any agreement between a bidder/proposer that prevents a JSEB from
2 providing quotations to other bidders/proposers is prohibited.

3 (c) Joint ventures shall only be allowed under this Program in cases
4 that demonstrate legitimate, detailed JSEB partnerships with non-
5 JSEBs, proof of which shall be provided to the JSEB Administrator.

6 (d) Where the bidder/proposer cannot achieve the Project Specific
7 Goal(s), the JSEB Administrator, will determine whether Good Faith
8 Efforts have been made. In making this determination, the JSEB
9 Administrator will consider, at a minimum, a matrix to determine the
10 bidder/proposer's efforts to:

11 (1) Solicit certified subcontractors in the scopes of work of
12 the contract. The bidder/proposer shall provide interested JSEBs
13 with timely, adequate information about the plans,
14 specifications, and other such requirements of the contract to
15 facilitate their quotation. The bidder/proposer must follow up
16 initial solicitations with interested JSEBs.

17 (2) Identify a portion of the work available to JSEBs consistent
18 with their availability.

19 (3) Negotiate in good faith with interested JSEBs. Price sharing
20 is prohibited in negotiations. Evidence of such negotiation
21 includes the names, addresses, and telephone numbers of JSEBs
22 that were contacted; a description of the information provided
23 regarding the plans and specifications for the work selected for
24 subcontracting; and why agreements could not be reached with
25 them. The ability or desire of a bidder/proposer to perform the
26 work of a contract with its own organization does not relieve
27 it of the responsibility to make Good Faith Efforts on all scopes
28 of work subject to subcontracting.

29 (4) Facilitate the leasing of equipment supplies or equipment
30 when they are of such a specialized nature that the JSEB could

1 not readily and economically obtain them in the marketplace,
2 where feasible.

3 (5) Provide JSEBs with the scope of work for the project, which
4 entails the specific work to be performed by the JSEB contractor,
5 and a pricing proposal from the JSEB based on the specific scope
6 of work provided. The bidder/proposer shall provide evidence
7 in the bid documents of meeting this requirements.

8 **Sec. 126.617. - Pre-award review of compliance with numerical goals,**
9 **including good faith efforts.**

10 (a) The JSEB Administrator shall timely review the Schedule of
11 Participation prior to award, including the scope of work and the
12 letters of intent from JSEBs. The JSEB Administrator may request
13 clarification in writing of items listed in the Schedule of
14 Participation, provided such clarification shall not include the
15 opportunity to augment listed JSEBs participation or Good Faith
16 Efforts. The JSEB Administrator shall review all submittals and
17 document the participation of each submittal.

18 (b) If the JSEB Administrator determines that the Schedule of
19 Participation demonstrates that the Project Specific Goal(s) have
20 been achieved or Good Faith Efforts made, and the user department
21 concurs, the Chief shall recommend award to the General Awards
22 Committee. The JSEB Administrator shall verify with each JSEB that a
23 contract in the specified amount has been awarded.

24 (c) The JSEB Administrator may, in consultation with the Chief,
25 promulgate Program rules to ensure equitable distribution of work by
26 prime contractors among JSEBs that are certified to do the subcontract
27 scope of work.

28 **Sec. 126.618. - Good faith efforts in lieu of meeting Program goals.**

29 For a contract with JSEB subcontracting goals, a contractor must
30 comply by either meeting the goal or demonstrating Good Faith Efforts

1 to achieve it that are consistent with the requirements set forth in
2 this Part. In determining whether a bidder/proposer has made Good
3 Faith Efforts, in lieu of achieving the stated goals, the JSEB
4 Administrator shall consider all relevant factors, which include:

5 (a) The ability of other bidders/proposers in meeting the Project
6 Specific Goal(s) may be considered as follows:

7 (1) A contact log showing the name, address, and contact number
8 (phone or fax) used to contact the proposed JSEB certified in
9 the scope of work, nature of work requested for quote, date of
10 contact, person making the effort;

11 (2) The description of work for which a quote was requested;

12 (3) The amount of the quote given, if one was obtained;

13 (4) The list of divisions of work not subcontracted and an
14 explanation why not; and

15 (5) Subcontractor information as requested by forms developed
16 by the Equal Business Opportunity Office.

17 (b) For contracts other than for construction related professional
18 services, a signed letter of intent from all listed JSEBs describing
19 the work, materials, equipment or services to be performed or provided
20 by JSEBs and the agreed upon dollar value shall be due with the bid
21 documents but in no event before the expiration of 48 hours after the
22 submission of the bid.

23 (c) For construction related professional services contracts, the
24 highest ranked proposer must deliver at the time of fee and contract
25 negotiations signed letters of intent between the proposer and any
26 JSEBs the proposer intends to use on the project.

27 If the JSEB Administrator finds that a bidder/proposer did not make
28 sufficient Good Faith Efforts, the JSEB Administrator shall
29 communicate this finding to the user department and recommend that

1 the bid/proposal be rejected. A bidder/proposer may protest this
2 determination pursuant to the City's bid protest procedures.

3 **Sec. 126.619. - Contract performance compliance procedures.**

4 (a) Upon award of a contract by the City that includes Project
5 Specific Goal(s), the prompt pay obligations in the City's contract
6 with the prime contractor, and the contract between the prime
7 contractor and the subcontractors and subconsultants named in
8 response to this Act become covenants of performance by the contractor
9 in favor of the City.

10 (b) The contractor shall provide a listing of all JSEBs and any other
11 subcontractors to be used in the performance of the contract, and
12 subcontractor payment information to the City with each request for
13 payment submitted to the City. The JSEB Administrator and the user
14 department shall monitor subcontractor participation during the
15 course of the contract and shall have reasonable access to all
16 contract-related documentation held by the contractor.

17 (c) The contractor cannot make changes to the Schedule of
18 Participation or substitute subcontractors named in the Schedule of
19 Participation without the Chief's prior written approval based on the
20 Ombudsman's recommendation and JSEB Administrator's compliance
21 review. Unauthorized changes or substitutions shall be a violation
22 of this chapter, and may constitute grounds for rejection of the bid
23 or proposal or cause termination of the executed contract for breach,
24 the withholding of payment and/or subject the contractor to contract
25 penalties or other sanctions.

26 (1) All requests for changes or substitutions of the
27 subcontractors named in the Schedule of Participation shall be
28 made to the Ombudsman with a copy to the JSEB Administrator in
29 writing, and shall clearly and fully set forth the basis for the
30 request. A contractor shall not substitute a subcontractor or

1 perform the work designated for a subcontractor with its own
2 forces unless and until the Chief approves such substitution in
3 writing. A contractor shall not allow a substituted
4 subcontractor to begin work until the Chief has approved the
5 substitution based on the recommendation of the JSEB
6 Administrator.

7 (2) The facts supporting the request must not have been known
8 nor reasonably should have been known by either party prior to
9 the submission of the Schedule of Participation. Bid shopping
10 is prohibited. The contractor must bring this dispute to the
11 Ombudsman for resolution.

12 (3) The Chief's final decision whether to permit or deny the
13 proposed substitution, and the basis therefore, will be
14 communicated to the parties in writing by the Chief, with a copy
15 to the CAO.

16 (4) If the City requires the substitution of a subcontractor
17 listed in the Schedule of Participation, the contractor shall
18 undertake Good Faith Efforts to fulfill the Schedule of
19 Participation if the Project Specific Goals would not otherwise
20 be met. If the Goal(s) cannot be reached and Good Faith Efforts
21 have been made, the contractor may substitute with a non-JSEBs.

22 (d) If a Contractor plans to hire a subcontractor on any scope of
23 work that was not previously disclosed in the Schedule of
24 Participation, the contractor shall obtain the approval of the JSEB
25 Administrator to modify the Schedule of Participation and must make
26 Good Faith Efforts to ensure that JSEBs have a fair opportunity to
27 bid on the new scope of work.

28 (e) Changes to the scopes of work shall be documented by the user
29 department at the time they arise, to establish the reasons for the
30 change and the effect on achievement of the Project Specific Goal(s).

1 **Sec. 126.620. - Continuing obligations of JSEBs and graduation.**

2 A JSEB shall apply for re-certification every twenty-four (24) months
3 from the date of initial certification through a re-certification
4 application developed by the JSEB Administrator. Failure of the firm
5 to seek re-certification by filing the necessary documentation with
6 the Equal Business Opportunity Office within 60 days from the date
7 of receipt of written notification from the Equal Business Opportunity
8 Office may result in de-certification.

9 (a) It is the responsibility of the JSEB to notify the Equal Business
10 Opportunity Office of any change in its circumstances affecting its
11 continued eligibility for the Program. Failure to do so may result
12 in the firm's de-certification and preclusion from future
13 participation.

14 (b) The JSEB that no longer meets certification may be decertified
15 at any time.

16 (c) A firm, or qualifying individuals, who have participated in the
17 JSEB program for a total of nine (9) years from the date of the JSEB's
18 first contract as a prime contractor of the City or as a subcontractor
19 retained by a prime contractor of the City, whichever is earlier, and
20 subject to the extensions for good cause provided in Section 126.613,
21 shall graduate from the Program.

22 **Sec. 126.621. - De-certification, Denial and appeal procedure.**

23 (a) The JSEB Administrator may move to decertify a JSEB that
24 repeatedly fails to honor quotations in good faith, or otherwise
25 comply with Program requirements.

26 (b) A firm that has been denied certification or re-certification or
27 been decertified may protest the denial or de-certification as
28 follows:

1 (1) Within 15 days of receipt of denial of certification or re-
2 certification, or notice of intent to decertify, the firm may
3 protest such action in writing to the JSEB Administrator.

4 (2) An informal hearing shall be held by the JSEB Administrator,
5 at which the firm may present additional facts and evidence in
6 support of its eligibility. The JSEB Administrator may request
7 the attendance of any witness and production of any documents
8 concerning the applicant's affairs. The applicant's failure to
9 comply promptly with these requests may be grounds for denial
10 of the appeal.

11 (3) The JSEB Administrator shall determine the firm's
12 eligibility on the basis of the information provided at the
13 hearing. The JSEB Administrator's written decision shall be
14 communicated to the firm within ten days of the hearing.

15 (4) The applicant may appeal the JSEB Administrator's decision
16 in writing to the City's Government Awards Committee or the
17 Professional Services Evaluation Committee within five days of
18 receipt of the determination. The Committee shall hold a hearing
19 within ten days of receipt of the written notice of appeal, and
20 render a final decision within 30 days of the hearing. The
21 presumption that the decertified firm is eligible shall remain
22 in effect until the City renders a final decision.

23 (5) A firm denied or found to be ineligible may not apply for
24 certification for one year after the effective date of the final
25 decision.

26 (c) A third party may challenge the eligibility of an applicant for
27 certification or a certified firm. The presumption that the challenged
28 firm is eligible shall remain in effect until the City renders a
29 final decision. A third party challenge shall be made as follows:

1 (1) The challenge shall be made in writing to the JSEB
2 Administrator and shall include all information relied upon by
3 the challenging party.

4 (2) The JSEB Administrator shall notify the challenged firm in
5 writing of the challenge, identify the challenging party and
6 provide the challenged firm with a copy of the challenge. The
7 notice may also require the challenged firm to provide the JSEB
8 Administrator, within a reasonable time, any information
9 requested to permit the JSEB Administrator to evaluate the
10 eligibility of the firm.

11 **Sec. 126.622. - Other provisions of purchasing code to apply.**

12 Except as provided in this part to implement the Program, the
13 provisions of Parts 1, 2, 3 and 4, of Chapter 126, apply. The Director
14 shall establish rules that specify the manner in which conflicts
15 between the provisions of Parts 1, 2, 3, or 4 of this chapter are to
16 be resolved.

17 **Sec. 126.623. - Counting subcontracting participation of JSEBs.**

18 (a) The entire amount of that portion of a construction subcontract
19 that is performed by the JSEB's own forces shall be counted, including
20 the cost of supplies and materials obtained by the JSEB for the work
21 of the subcontract, and supplies purchased or equipment leased by the
22 JSEB. Supplies and equipment purchased or leased by a JSEB from the
23 prime contractor or its affiliate shall not count as JSEB
24 participation.

25 (b) The entire amount of fees or commissions charged by a JSEB for
26 providing a bona fide service, such as professional, technical,
27 consultant or managerial services, or for providing bonds or insurance
28 specifically required for the performance of a contract shall be
29 counted, provided the fee is reasonable and not excessive as compared
30 with fees customarily charged for similar services.

1 (c) If a firm ceases to be a certified JSEB during a contract, the
2 dollar value of work performed under a contract with that firm after
3 it has ceased to be certified shall be counted in the City's internal
4 accounting. No contractor shall be penalized in any way as a result
5 of the failure of a project to achieve its Project Specific Goals
6 because of the operation of this Section.

7 (d) In determining achievement of a Subcontracting Participation
8 Goal, the participation of a JSEB shall not be counted until the
9 amount being counted has been paid to that entity.

10 (e) Achievement of Project Specific Goal(s) shall be evaluated
11 following the completion of the project.

12 **Sec. 126.624. - Acts which may result in expulsion from the JSEB**
13 **program; fines, and criminal offenses.**

14 (a) The following violations of this chapter are unlawful and may be
15 prosecuted in Municipal Court as Class D offenses:

16 (1) Providing information to the City in connection with an
17 application for or challenge to certification, re-certification
18 or de-certification as JSEBs that the providing party knew or
19 should have known to be false or misleading.

20 (2) Providing information to the City in connection with
21 submission of a bid, responses to requests for qualifications
22 or proposals, Good Faith Efforts documentation, post-award
23 compliance, or other Program operations that the providing party
24 knew or should have known to be false or misleading.

25 (3) Falsely attesting to re-certification under this program.

26 (4) Substituting JSEB subcontractors without first receiving
27 approval for such substitutions.

28 (5) Committing any other violations of the provisions of this
29 chapter.

1 (6) Submitting false documentation for payments.

2 (b) A bidder, proposer, contractor, or subcontractor is subject to
3 withholding of payments under the contract, termination of the
4 contract for breach, contract penalties, de-certification as a JSEB,
5 or being barred or deemed non-responsive in future City solicitations
6 and contracts for up to two years, if it is found to have:

7 (1) Provided information in connection with an application for
8 certification or re-certification that it knew or should have
9 known to be false or misleading.

10 (2) Provided information in connection with the submission of a
11 bid or proposal or documentation of Good Faith Efforts, post-
12 award compliance, or other Program operations that it knew or
13 should have known to be false or misleading.

14 (3) Failed in bad faith to fulfill the Subcontracting
15 Participation Goal, thereby materially breaching the contract.

16 (4) Repeatedly failed to comply in good faith with substantive
17 provisions of this chapter.

18 **Section 6. Creating a new Section 111.610 (JSEB Access to**
19 **Capital Program Trust Fund), Part 6 (Economic and Community**
20 **Development), Chapter 111 (Special Revenue and Trust Accounts),**
21 **Ordinance Code.** A new Section 111.610 (JSEB Access to Capital Program
22 Trust Fund), Part 6 (Economic and Community Development), Chapter 111
23 (Special Revenue and Trust Accounts), *Ordinance Code*, is hereby
24 created to read as follows:

25 **CHAPTER 111 SPECIAL REVENUE AND TRUST ACCOUNTS**

26 * * *

27 **PART 6 (ECONOMIC AND COMMUNITY DEVELOPMENT)**

28 * * *

29 **Sec. 111.610. - JSEB Access to Capital Program Trust Fund.**

30 There is created within the General Trust and Agency Fund a trust

1 fund account to be known as the JSEB Access to Capital Program Trust
2 Fund, hereinafter called the "Fund." All donations and contributions
3 of money, including gifts and grants, and Council appropriations, if
4 any, shall be deposited into the Fund to be used for the Access to
5 Capital Program (the "Program") provided in Chapter 126, Subpart C
6 of the Code. All sums placed into the Fund, which shall include all
7 interest earned or accrued thereon, are hereby appropriated and shall
8 carry over fiscal years to be used for the Program purposes,
9 functions, and goals provided in Chapter 126, Subpart C of the Code.
10 The Director of Finance and Administration, or his/her designee, is
11 authorized and directed to make disbursements from the Fund for
12 Program purposes, functions and goals upon written requisition of
13 the Chief of Procurement in consultation with the JSEB Administrator,
14 subject to the availability of funds in the Fund. Nothing in this
15 Section shall prohibit or otherwise limit any appropriations which
16 may be made by Council to the Fund for use toward attaining the
17 Program purposes, functions and goals described in Chapter 126,
18 Subpart C of the Code.

19 * * *

20 **Section 7. Providing for a temporary suspension of the JSEB**
21 **Administrator's authority to decertify a JSEB due to noncompliance**
22 **with the JSEB Program eligibility criterion contained in Section**
23 **126.613(c)(2), Ordinance Code, pertaining to personal net worth**
24 **limitations.** As of the effective date of this ordinance and until six
25 (6) months from date that the JSEB Administrator provides the required
26 disparity study report to the Mayor and City Council in accordance
27 with Section 126.612, *Ordinance Code*, the JSEB Administrator shall
28 not decertify a JSEB due to noncompliance with the personal net worth
29 limitations contained in Section 126.613(c)(2), *Ordinance Code*. This
30 section shall not prohibit the JSEB Administrator from decertifying
31 any JSEB in accordance with the JSEB Program rules and procedures for

1 reasons other than noncompliance with the personal net worth
2 limitations contained in Section 126.613(c) (2), *Ordinance Code*. This
3 section shall apply to any unresolved JSEB decertification appeals
4 existing on the effective date of this ordinance provided that such
5 decertification was solely due to noncompliance with the personal net
6 worth limitations contained in Section 126.613(c) (2), *Ordinance Code*.

7 **Section 8. Repealing Ordinance 2019-759-E.** Ordinance 2019-
8 759-E (An Ordinance Approving and Adopting Revised Underwriting
9 Guidelines for the JSEB Access to Capital Program to Clarify Pre-
10 Qualification Criteria and Required Documentation) is hereby repealed
11 as of the effective date of this ordinance. A copy of Ordinance
12 2019-759-E is attached here to as **Exhibit 3**. The JSEB Access to
13 Capital Program shall be governed by the program guidelines developed
14 and approved by the JSEB Administrator pursuant to Chapter 126, Part
15 6 of the Code, without further approval by the City Council.

16 **Section 9. Codification Instructions.** The Codifier and the
17 Office of General Counsel are authorized to make all chapter and
18 division "tables of contents" consistent with the changes set forth
19 herein. Such editorial changes and any others necessary to make the
20 Ordinance Code consistent with the intent of this legislation are
21 approved and directed herein, and changes to the Ordinance Code shall
22 be made forthwith and when inconsistencies are discovered.

23 **Section 10. Effective Date.** This ordinance shall become
24 effective upon signature by the Mayor or upon becoming effective
25 without the Mayor's signature.

