MEMORANDUM

TO:	William S. Morian, III, City Attorney, City of Jasper, Texas
COPY:	Mayor and City Council
FROM:	Frank J. Garza, Davidson, Troilo, Ream & Garza, PC
DATE:	March 31, 2025
Re:	Jasper Economic Development Corporation

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In February 2025, you and the City Council engaged my services to look into the Jasper Economic Development Corporation ("JEDCO") and to its membership and whether it is currently operating legally. It is my understanding that the JEDCO Board has not been meeting for the last few months pending my legal review. Based on my review and legal analysis, the JEDCO is currently operating legally and can resume operating with its seventeen (17) member board. **But whether a 17-member board is retained and who is appointed are the exclusive decisions of the City Council.**

JEDCO is a Type A EDC entity, and the City Council determines the exact size of a Type A board, but the board must be composed of at least five (5) members. Tex Local Govt. Code §504.051. City Council also has exclusive authority as to whom they appoint to serve on the JEDCO Board. The City Council, through the Bylaws, has determined that board members will serve two (2) year staggered terms. The Bylaws also do not have term limits, so City Council may reappoint a JEDCO board member to as many subsequent terms as they desire. More importantly, the City Council may remove a JEDCO board member with or without cause at any time. §504.051.

State law also does not impose residency requirements or other qualifications for service on a Type A board and the JEDCO Articles also do not impose residency requirements but simply state, "*In all instances the Jasper City Council shall consider an individual's experience, accomplishments and educational background along with any recommendations in appointing members to the Board to ensure that the interests and concerns of all segments of the community are first considered*."

Based on my review of the JEDCO Bylaws and council action, here is what I found:

- **December 14, 1992 –** Jasper City Council adopted Resolution #2320 authorizing the Creation of the JEDCO and adopting its Articles of Incorporation and Bylaws. Both the Articles and Bylaws approved the initial five (5) member Board of Directors.

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- **June 6, 2006 –** Bylaws, Section 4.2 state that there authorized number of Directors of this Board shall be five (5). Section 4.6 states that the terms of office for Directors shall be two (2) year staggered terms, and the number of Directors shall be five (5).

- **July 14, 2008 –** City Council Minutes state the following, "Mayor Barber discussed JEDCOO bylaws with Council. Motion by Council Member Randy Sayers to appoint 10 additional members to the JEDCOO Board, second by Council Member Joe Clyde Adams. Council Member Randy Sayers made an amendment to his motion stating to appoint who they choose. Council Member Terrya Norsworthy seconded the motion and added she would like to see the owner of Martine's Restaurant to the Board along with Dr. Brown. **Motion by Council Member Randy Sayers to appoint 10 additional members to the JEDCOO Board, Dr. Brown to the Board and the owner of Martine's, Mr. Romarrow, total of 12 members. Second by Council Member Joe Clyde Adams. Motion carried unanimously**. (Emphasis added).

- **August 5, 2008 –** Bylaws, Section 4.2 state that there authorized number of Directors of this Board shall be seventeen (17). Section 4.6 states that the terms of office for Directors shall be two (2) year staggered terms, and the number of Directors shall be seventeen (17).

Based on the Minutes I received to review, I could find no Minutes of the City Council that approved the August 5, 2008, Bylaws. But it was the City Council that approved increasing the JEDCO Board from five (5) to seventeen (17) through its official action (Motion and Vote) to add twelve (12) additional members on July 14, 2008. Therefore, it is my opinion that the current seventeen (17) JEDCO Board is authorized to act on behalf of the JEDCO. However, it is the **exclusive decision of the City Council** whether it wishes to retain the seventeen (17) board. The City Council has the option to reduce the number of board members as well as appointing the Mayor, other members of the City Council, members of the Chamber of Commerce or anyone they wish to appoint to sit on the JEDCO Board. The only state law requirement is that the JEDCO Board must have at least five (5) members. I reviewed the proposed revisions to the Bylaws, and it is within the Council's authority to adopt a Resolution to identity the number of board members and list who those board members should be. My only recommendation is that the City Council, when appointing the JEDCO Board, appoint the members to staggered terms.

In response to some of the other inquiries I received from the City regarding JEDCO, here are my responses:

- Since we have discussed the different levels of oversight that City Councils have over their EDCs, what seems to be the most efficient and clean level of oversight that a City Council should have over their EDC? **Response:** This depends on the oversight the City Council wants over its EDC. I have seen a City simply approve an annual budget for its EDC and then no other approval is needed as long as all expenditures are in compliance with the annual budget. That EDC Board hires and fires the EDC Director and Council has no input on that selection. This City gets

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quarterly reports from their EDC on prospects and accomplishments, but no other oversight by the City Council. I have another City where the City Council appoints the EDC Director and approves the annual budget as well as any and all expenditures over $5,000. In my opinion both of these cities are the extremes of one not having much oversight while the other having too much oversight. I think the best option would be somewhere in the middle where the City Council would do the following:

- Approve annual budget;
- Confirm the selection of the EDC Director recommended by the EDC Board;
- All expenditures over $50,000 need City Council approval; and
- Quarterly reports to the City Council in Executive Session on company prospects and an Open Session report on accomplishments.
- At least one Board member should be a Council Member and the official liaison to the City Council.
- I do not recommend more than 1 city elected official to serve on the EDC because in my experience, the EDC tends to go outside of EDC matters and handle other city matters.
- City Manager could be an ex-officio board member (no vote but able to attend Executive Sessions of the EDC).

The one issue to make the changes listed above, the JEDCO Board will have to amend its current Bylaws to clearly identity the oversight it wishes the Council to have over the JEDCO. In Section 11.1 of the Bylaws, amendments to the Bylaws can only be made by the Board. Once the JEDCO Board approves Bylaw amendments, the Bylaws only come into effect upon City Council approval.

- Should there be a forensic audit performed on JEDCOO? **Response:** I would not recommend a forensic audit from the outset. A forensic audit is a specialized examination of an organization's financial records and transactions to identify potential fraud, misconduct, or other potential financial crimes. I would recommend that the City's external auditor conduct an initial audit of the JEDCO financials and have them look for irregularities and issue a report on what they find. Does the JEDCO already conduct an annual audit by an external auditing firm? If so, by whom? If so, the City's auditor could review the JEDCO external audit to determine if they find any concerning issues. I would only recommend a forensic audit if there was some evidence of criminal activity or questionable financial transactions.

- Is it a conflict of interest for JEDCOO's attorney, who created the original Provaius contract and represented JEDCOO and the City of Jasper, to determine if the conditions were met? Should our City Attorney and/or other outside council give their opinion as to whether the conditions were met? **Response:** I and other attorneys have represented both the City and EDC on contract negotiations when both entities are clearly aligned with each other. Only the attorney, or one of the

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entities can determine if there is a conflict or potential conflict in representing both parties. For example, when I negotiated a contract for a tax abatement that both parties agreed to, I represented both the City and EDC, but when I was negotiating an Administrative contract between the City and EDC, I could not represent both because both entities had different positions and goals they wanted to accomplish in the Administrative Contract. For example, the City wanted to be reimbursed 100% for a city employee doing EDC work but the EDC argued that the City employee only worked 60% of the time on EDC matters. The EDC had to retain its own counsel.

- An opinion on the legality of JEDCO Director Kenneth Brooks employment and if the creation of the employment documents were legal? **Response:** I do not have sufficient information to complete an analysis on this matter. There is no state ethics code that would prohibit a former JEDCO Director from obtaining a contract from the JEDCO. I will have to determine if the City has an Ethics Code and if it applies to JEDCO members. In my review of the City's Code of Ordinances in the MuniCode, there is no Ethics Code online.

- Can an FOIA request be made, then documents be subsequently created by an employee of JEDCOO and then provided in the referenced FOIA request. **Response:** With regards to a records request, the Texas Public Information Act recommends that only documents in existence at the time the request was submitted should be released and that the entity is not required to create documents in response to a request. However, there is no legal prohibition of an entity preparing documents in response to an Open Records (FOIA) request, unless it can be shown that the documents created were false or contained false information.

Please let me know if you have any questions or if we need to discuss this matter any further.