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TO: Frank White, County Executive

FROM: Bryan Covinsky, County Counselor 

DATE: February 3, 2025

RE: Response to Troy Thomas's Budget memo from January 30, 2025

This memorandum is written in response to the memo of the County Auditor, Q. Troy Thomas, on January 30, 2025 regarding the proposed budget for fiscal year 2025. The Auditor's memo makes legal conclusions that are not supported by law and have no legal authority. In addition, the auditor has no license to practice law to give such legal advice to county officials or county employees and to do so is inappropriate and potentially unlawful.

To place this opinion in its appropriate context, it is necessary to present a brief recap of the present circumstances. A proposed budget for fiscal year 2025 was prepared and presented to the County Legislature on November 15, 2024. On December 2, 2024 it was placed on the legislative agenda as Ordinance 5902. The County Legislature passed an amended version of Ord. 5902 on the 31st of December. The County Executive vetoed and returned Ord. 5902 to the Legislature unsigned on January 9, 2025. The legislature has held two regular meetings since the veto was returned and they did not vote to override the veto at the following meeting. Therefore, such override opportunity has been waived, as it was not done at the following meeting.

The County Executive has Legal Authority to Veto Any Ordinance in its Entirety.

The memo provided by the County Auditor misrepresents the ability of the County Executive to veto an entire ordinance under a misreading of Article II, Section 12 of the Jackson County Home Rule Charter.

The County Charter provides how **all** ordinances shall be adopted by the County as outlined in Article II, Section 12.

All county ordinances passed by the County Legislature shall within five days thereafter be presented to the County Executive. If the County Executive approves the county ordinance, he or she shall sign it, and the county ordinance shall thereupon be deemed enacted, but if not, the County Executive shall return it with his or her objections to the County Legislature, which shall enter the objections on its journal, and proceed to reconsider it. After such reconsideration, two thirds of the members of the County Legislature may pass the county ordinance over the objection of the County Executive. In all such cases the vote shall be determined by yeas and nays, and the names of the persons voting for and against the county ordinance shall be entered on the journal of the County Legislature. Any county

ordinance not returned by the County Executive within ten days after it shall have been presented to the County Executive shall be deemed approved, as if signed. In the case of county ordinances appropriating money the County Executive may object to one or more items or portion of items while approving other portions, in which case the approved items or portions shall take effect and the items or portions objected to shall be reconsidered separately.

The auditor's statement that the power to adopt the budget is vested "solely" in the County legislature is wrong. The process to enact an ordinance--including the budget--is outlined in the code and in the Charter, including in Article II, section 12 above. The County Executive recommends a budget, the legislature adopts a budget (with or without amendments) and then the County Executive has to sign that adopted budget for it to become law. If the County Executive elects not to sign the budget ordinance, that veto must be overridden with a vote of 6 members of the legislature. It is a misrepresentation of our charter for the Auditor to state otherwise.

The Auditor goes to great lengths to try and distinguish a budget ordinance from an ordinary ordinance, but the Charter clearly does not contain such a distinction anywhere, including in Article II, section 12. The article begins by stating, "all county ordinances passed..." must be returned for approval by the County Executive and outlines the timing for the veto and how the legislature may override said veto. The Auditor attempts to separate the type of ordinances that can be vetoed in their entirety and there is no authority in the charter that provides this distinguishment. The Auditor's statement that a budget ordinance does not require the County Executive's signature to be effective has no basis in the law. Article II, Section 12 clearly states that ALL county ordinances shall go to the County Executive for signature. In fact, the Ordinance in question, Ordinance 5902, states "Effective Date: This Ordinance shall be effective immediately upon its signature by the County Executive."

The Charter section above contemplates the Executive's veto power over all ordinances passed by the legislature. It also provides the County Executive the additional ability to line item veto appropriation ordinances. The first line in the sentence on appropriation ordinances states "In the case of" which means this includes appropriation ordinances. It goes on to say the County Executive "may" do line item vetoes on appropriations. This language makes it clear that the authority to line item veto ordinances or the entire ordinance is the choice of the County Executive. In no way does this section act to limit the County Executive to only line item vetoing appropriation ordinances.

Article II, Section 12 gives the County Executive additional veto power when it comes to appropriations ordinances. It does not limit his power to line-item vetoes. The Auditor's "legal interpretation" is inconsistent with the language in the Charter and how the Charter has historically been applied.

For example, Ordinances 5953, 5952, 5951, 5950, 5948, 5947, 5944, 5942, 5941, 5940, 5937, 5935, 5927, 5934, 5933, 5932, 5931, 5929, 5928, 5925, 5924, 5923, 5918, 5916, 5915, 5914, 5921, 5919, and 5913 were all appropriation ordinances that were vetoed in their entirety in December 2024. Ord. 5902 is not in some way singular or of a different character than any other appropriation ordinance. Any ordinance may be vetoed in its entirety.

State Law and the County Charter Contemplate the Scenario of a Delayed Approved Budget and Provide Guidance as to How to Proceed.

Additionally, the Auditor's memo infers that Jackson County must have a budget in place by December 31 of any given year other than the year following an election, and that a veto of such a budget ordinance is unlawful if the veto does not occur by this date. However, this conclusion does not conform to state statutes nor actual practice. State statutes and the County code have authority in place to account for when a budget is not in place at the end of a fiscal year. Again, the charter provides the process for enacting an ordinance which includes the authority of the County Executive to veto all ordinances. The statement by the Auditor reciting code but ignoring the charter and state statutes is objectively wrong and not based on a competent legal analysis.

The statutes recognize that an approved budget ordinance may not be in place at the end of the fiscal year as outlined in RSMo § 50.620. In practice, every 4 years Jackson County functions without an approved budget ordinance for the upcoming fiscal year until one is passed by the newly elected Legislature and County Executive.

The County continues to function in these circumstances as outlined in RSMo § 50.620 which provides that any fiscal year when appropriations have not been made that first and second-class counties will continue to appropriate according to the last annual appropriation for all expenses related to operation and maintenance.

Furthermore, if the legal conclusion that there must be an approved budget by January 31st were true, the County Executive could veto the budget on January 31st of any given year, leaving the Legislature with no way to override the veto without violating the Sunshine law. This would effectively remove the Legislature's ability to ever override a budget veto.

This statute contemplates how the County will function without the budget being passed by the end of the fiscal year. Since the budget ordinance was vetoed and no attempt to override has occurred, the County is functioning without a 2025 budget at this time and the state statute shall apply.

Potential Liability of Following the Auditor's Recommendations

The Legislature, if it follows the non legal memo from the Auditor will expose the County to litigation from the courts and other agencies that rely on the County to properly fund their offices and programs annually.

The Charter must be read in conjunction with state statutes and the County Code. The Auditor's memo ignores County Charter provisions for enacting ordinances. This process applies to all ordinances and cannot be ignored as the Auditor's memo suggests.

State statutes recognize that a budget ordinance may not be approved at the end of a fiscal year and provides authority and guidance on how to proceed until a budget is passed. Our charter process for ordinances applies equally to all ordinances.

Ordinance 5902 was vetoed, thus the County will continue to operate on the 2024 budget amounts for operations and maintenance until a 2025 budget is passed and approved in accordance with the process outlined in article II section 12 of the County Charter.