

**ALJ SERVICES  
MEMORANDUM OF UNDERSTANDING  
OALP & FPBSC**

**Contract # [insert]**

This Memorandum of Understanding (MOU) is entered into by and between the Office of Administrative Law Proceedings (OALP) and the Fire Prevention and Building Safety Commission (FPBSC). In consideration of the mutual understandings and covenants set forth herein, the parties agree as follows:

- 1. Purpose/Preamble:** As the FPBSC is a state agency that conducts administrative proceedings, which are subject to the jurisdiction of the OALP found in Ind. Code § 4-15-10.5-12 and which require the assignment of an administrative law judge (ALJ), this MOU is entered to set forth the expectations and responsibilities for each party regarding the provision of administrative proceedings by the OALP in accordance with applicable law and FPBSC procedures.
  
- 2. Scope:** This MOU covers administrative proceedings for which the OALP has been granted jurisdiction pursuant to Ind. Code § 4-15-10.5-12. This includes, but is not limited to, the following matters:
  - a.** Orders issued by the FPBSC including:
    - i.** Orders sanctioning a variance under 675 Ind. Admin. Code 12-5-9;
    - ii.** Orders modifying or reversing an order of a state agency or political subdivision concerning fire or building safety laws under Ind. Code § 22-13-2-7(a);
    - iii.** Orders finding conflict in rules of another state agency under 675 Ind. Admin. Code 12-10-3; and
    - iv.** Orders granting or denying a variance under 675 Ind. Admin. Code 12-5-6.2.
  - b.** Order issued by the Indiana Department of Homeland Security concerning:
    - i.** Construction design releases;
    - ii.** Written interpretations;
    - iii.** Amusement and entertainment events;
    - iv.** Regulated amusement devices;
    - v.** Boilers and pressure vessels;
    - vi.** Regulated lifting devices;
    - vii.** Utility scale battery energy storage systems;
    - viii.** Fireworks; and
    - ix.** Building and fire safety inspections.
  - c.** Orders from a fire department to cease and correct violations of fire safety laws under Ind. Code 36-8-17-9.
  - d.** Orders from a political subdivision concerning a Class 2 structure under Ind. Code § 22-13-2-7(c).
  
- 3. Initiating Proceedings Before the OALP.**
  - a.** Petitions for administrative review under Ind. Code § 4-21.5-3-7 may be filed directly with the OALP or the FPBSC in accordance with Ind. Code § 4-21.5-3-1(h). Any petition for administrative review filed directly with the OALP will be promptly forwarded by the OALP to the FPBSC for grant or denial in accordance with Ind. Code § 4-21.5-3-7.



Indianapolis, IN 46204

- 5. Ultimate Authority.** The FPBSC has ultimate authority over all FPBSC proceedings and may expressly designate its ultimate authority to the OALP in this MOU or a later designation made in writing. Designations made by the FPBSC, may be revoked at any time by providing written notice to the OALP.

The FPBSC expressly designates the OALP as the ultimate authority for purposes of taking final agency action in the following instances:

- a. Proceedings conducted under Ind. Code Chapter 4-21.5-4.
- b. When dismissing the matter and entering a final order based on agreement of the parties.
- c. When dismissing the matter based on voluntarily dismissal by Petitioner or Complainant.
- d. When dismissing a matter due to the order under review being rescinded.

Except where law provides otherwise, in all instances where the OALP is not the ultimate authority over a matter, an OALP action disposing of all issues in a proceeding will be issued as a nonfinal order which must be acted on by the ultimate authority or its designee in accordance with Ind. Code § 4-21.5-3-29.

- 6. Notice to the FPBSC of Nonfinal and Final Orders Issued by the OALP.** The OALP will serve a copy of any nonfinal or final order it issues to the ultimate authority in addition to the parties to the matter. Unless later notified in writing by the FPBSC, the OALP shall send these orders to: [buildingcommission@dhs.in.gov](mailto:buildingcommission@dhs.in.gov).
- 7. Notice to the OALP of Final Written Orders.** The FPBSC agrees to provide final orders on actions concerning a matter first heard by the OALP to the OALP upon issuance or no later than thirty (30) days after issuance by sending a copy of the order to [OALP@oalp.IN.gov](mailto:OALP@oalp.IN.gov) and titling the subject of the email as "FINAL AGENCY ACTION." In addition to providing a copy of the final order, the FPBSC will also submit any objections, motions, transcripts, audio recordings, meeting minutes, or any other documents related to the ultimate authority's consideration of the matter prior to issuance of the final order. The OALP shall store these records for purposes of maintaining the official record of the proceeding.
- 8. Availability and Indexing of Final Orders.** Pursuant to Ind. Code § 4-21.5-3-32, agencies are required to index and make available for public inspection and copying all written final orders. For purposes of complying with Ind. Code § 4-21.5-3-32, the FPBSC will retain its obligations under Ind. Code § 4-21.5-3-32.
- 9. Public Access to Records.** All documents (e.g. email, pleadings, notices, motions, orders, and exhibits) that are submitted to OALP are subject to the Indiana Access to Public Records Act, codified in Ind. Code Chapter 5-14-3. OALP has no authority to withhold disclosure of a document unless the record is excepted from disclosure in Ind. Code § 5-14-3-4. To ensure consistent application of the Indiana Access to Public Records Act, the parties shall consult each other and the FPBSC shall make any preliminary determinations regarding the release of documents that may be deemed confidential under the laws administered by the FPBSC.

**10. Official Record of Administrative Proceedings to be Maintained by the OALP.** Pursuant to Ind. Code § 4-21.5-3-33, the FPBSC is required to maintain an official record of each proceeding. The FPBSC and the OALP agree that the OALP shall maintain the official record of each proceeding as described in IC § 4-21.5-3-33. The OALP will ensure the official record complies with all statutory requirements and will serve as the central agency from which an official record may be requested for judicial review or any other reason.

**11. Additional Procedural or Other Terms Agreed to by the Parties.**

- a. Upon notice by the FPBSC to the ALJ assigned to a case, the FPBSC may arrange for a court reporter to be present at a hearing to transcribe the hearing. The FPBSC shall schedule and secure the court reporter's attendance for the hearing and shall bear the cost of the court reporter. The FPBSC shall provide a digital copy of any transcription to the OALP upon completion and the OALP shall maintain the copy of the transcript with the official case record. The OALP shall ensure that any room reserved where a court reporter is present shall be equipped with electrical outlets and space large enough to accommodate parties and the court reporter.
- b. Should the FPBSC request a transcription of a hearing that was not attended by a court reporter, the OALP shall provide the FPBSC with the audio of such proceeding and the FPBSC may bear the cost of transcribing the audio record. The FPBSC shall supply the OALP with a copy of any transcription produced to be maintained with the official case file.
- c. In proceedings where an interpreter may be required, the OALP will provide a "proceeding interpreter" at no cost to the parties. This includes ensuring the presence of interpreters at any hearing or prehearing occurring before an OALP ALJ. However, unless a law provides otherwise, the OALP generally will not translate party documents as part of this service. Documents filed with the OALP in a foreign language are to be translated into English with sufficient proof that the translation is accurate. The filing party bears the cost of translating their document to English prior to filing it with the OALP. If necessary, the OALP will translate orders, notices, or other communications it issues. If issues arise during discovery regarding which party bears the burden of translation, those may be addressed in discovery orders issued in any particular proceeding, however, the OALP is not responsible for the costs of translation or the provisions of interpreters to facilitate the discovery process.
- d. If a transcript is required to be prepared under Ind. Code 4-21.5-5-13(c) to complete the agency record for judicial review, the OALP will arrange for a third party to complete the transcript. However, prior to initiating transcription services by the third party, the petitioner for judicial review will be billed directly by the third party for the cost of the transcripts in accordance with Ind. Code § 4-21.5-5-13(d). If the petitioner is exempted from this charge by filing a statement under Ind. Code § 33-37-3-2, the OALP will be responsible for the costs.

**12. Consideration.** The consideration during the term of this MOU is \$0. No monies shall be exchanged between the parties for the purposes set forth in this MOU.

**13. Term.** This MOU shall commence upon execution and shall remain in effect until terminated or modified.

**14. Termination.** This MOU may be terminated in whole or in part by either party, upon thirty (30) days' written notice.

**15. Modification.** This MOU may be modified in whole or in part by a mutually agreed upon written amendment.

**16. Changes in Law.** This MOU may be rendered null and void, in whole or in part, by changes in federal or state law. In such an event, each party agrees to notify the other as soon as possible.

**17. Severability.** If any provision of this MOU is found unenforceable, the remaining provisions shall continue in full force and effect.

**18. Cancellation by State Budget Agency.** Though no funds are being exchanged in this MOU, if the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of this MOU, the MOU shall be cancelled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**19. Notice to Parties.**

- a. Notice to the OALP shall be given to:  
Office of Administrative Law Proceedings  
Attn: Deputy Director and General Counsel  
Indiana Government Center North  
100 North Senate Avenue, Suite N-802  
Indianapolis, IN 46204  
Email: [oaalp@oaalp.in.gov](mailto:oaalp@oaalp.in.gov)
  
- b. Notice to the FPBSC shall be given to:  
Indiana Department of Homeland Security  
Attn: Office of General Counsel  
302 W. Washington St, Room E208  
Indianapolis, IN 46204