

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS  
AND  
THE FIRE PREVENTION AND BUILDING SAFETY COMMISSION**

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 (“Commission”). In consideration of the mutual understandings and covenants set forth herein, the parties agree as follows:

**1. Purpose/Preamble.**

Whereas, IC § 4-15-10.5-12 grants the OALP jurisdiction over all state of Indiana administrative proceedings concerning agency administrative actions under the Administrative Orders and Procedures Act (“AOPA” codified in IC § 4-21.5 *et seq.*) or any other statute that requires or allows the OALP to take action;

Whereas, the Commission at times may determine the legal rights, duties, or privileges of a party and therefore may issue administrative orders subject to the jurisdiction of the OALP;

Whereas, the Commission and the OALP agree to abide by the procedures set forth below to efficiently comply with the requirements of IC § 4-15-10.5 *et seq.*, IC § 4-21.5 *et seq.*, and other relevant Indiana Code and Indiana Administrative Code provisions applicable to the Commission’s administrative procedures.

**2. Petitions for Review.**

- A. The Commission shall accept and evaluate all Petitions for Review and grant or deny the Petitions for Review in accordance with the AOPA.
- B. Upon granting a Petition for Review, if an Administrative Law Judge (“ALJ”) is needed, the Commission shall request the assignment of an ALJ from the OALP by completing the appropriate request form on the OALP’s website.

**3. Ultimate Authority.** The Commission shall be the ultimate authority, as defined in IC § 4-21.5-1-15, for all Commission actions unless otherwise identified in this MOU or in any other written designation by the Commission.

- A. As identified in Exhibit A, the Commission designates the OALP as the ultimate authority to issue final orders on the Commission’s behalf in the following instances:
  - (1) the Petitioner requests to voluntarily dismiss the administrative review and terminate further proceedings;

- (2) the parties of the administrative review submit a Stipulated, Agreed Motion to Dismiss (Joint Motion to Dismiss) to the ALJ, terminating further proceedings;
  - (3) the petition for administrative review requests a stay of enforcement of the order in dispute and the ALJ is issuing an order regarding the request for stay; and
  - (4) the petition for administrative review is a review of an Emergency Order issued with respect to one or more violations of the Commission's rules or state statutes administered by the Commission.
- B. The Commission may revoke the designation in Section 3.A. at any time and for any reason by providing written notice to the OALP.
- C. The Commission will promptly send a copy of any action taken by the Commission to request assignment of an OALP ALJ to preside over its administrative proceedings pursuant to IC § 4-21.5-3-9.
- 4. Notice to Commission of Written Recommended Orders.** In all matters that require it, the OALP ALJ shall administer hearings and complete a Findings of Facts, Conclusions of Law and a Recommended Order. The Recommended Order and any documents incorporated in the Recommended Order, all filings, notices and any other order shall be distributed to all parties to the case in a timely manner and within any required timeframe as listed by statute or rule.
- 5. Notice to the OALP and Parties of Final Written Orders.** The Commission agrees to provide Final Orders or 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 the Final Agency Action to [OALP@oalp.IN.gov](mailto:OALP@oalp.IN.gov) and titling the subject of the email as "FINAL AGENCY ACTION." The Commission and the OALP will also ensure that the OALP receives any necessary documents from the ultimate authority's hearing, if one is conducted, so that those documents are added to the official record of the administrative hearing. This includes, but is not limited to, the Final Order, transcripts, additional briefs, audio records, or meeting minutes.
- 6. Public Access to Administrative Records.** All documents (including email, pleadings, notices, orders, and exhibits) that are submitted to OALP are subject to the Indiana Access to Public Records Act, codified in IC § 5-14 *et seq.* OALP has no authority to withhold disclosure of a document unless the document falls within one of the exceptions found in IC § 5-14-3-4. Regardless of the requirement to comply with the Indiana Access to Public Records Act, the Commission shall be responsible for compliance with IC 4-21.5-3-32.
- 7. Official Record of an Administrative hearing to be Maintained by the OALP.** Pursuant to IC § 4-21.5-3-33, an agency shall maintain an official record of each proceeding. The Commission 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 by the Commission, the public, or by any party to a proceeding upon request for judicial review.

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

- A. Upon notice by the Commission to the ALJ assigned to a case, the Commission may arrange for a court reporter to be present at a hearing in order to transcribe the hearing. The Commission shall schedule and secure the court reporter's attendance for the hearing and shall bear the cost of a court reporter. The Commission 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 Commission request a transcription of a hearing that was not attended by a court reporter, the OALP shall provide the Commission with the audio of such proceeding and the Commission may bear the cost of transcribing the audio record. The Commission shall supply the OALP with a copy of any transcription produced to be maintained with the official case file.

**9. 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.

**10. Term.** This MOU shall commence July 1, 2021 and remain in effect through June 30, 2023.

**11. Termination.** This MOU may be terminated in whole or in part by either party, upon thirty (30) days' written notice, if such party determines that termination is in its best interest.

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

**13. 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.

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

**15. 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 the MOU with the Indiana Department of Homeland Security for compensation reimbursement, 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.

**16. Notice to Parties.**

A. Notice to the OALP shall be given to:

Office of Administrative Law Proceedings  
Attn: Deputy Director and General Counsel  
100 North Senate Avenue, Suite N802  
Indianapolis, IN 46204

B. Notice to the Commission shall be given to:

Indiana Department of Homeland Security  
Attn: Office of General Counsel  
302 West Washington Street, Room E208  
Indianapolis, IN 46204

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**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member or officer of the agreeing party. Further, to the undersigned’s knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the party, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this MOU other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the MOU, the party attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

**In Witness Whereof**, each party, through their duly authorized representatives, entered into this MOU. The parties, having read and understood the foregoing terms of this MOU, do by their respective signatures dated below agree to the terms thereof.

**Office of Administrative Law Proceedings**

\_\_\_\_\_  
Michelle Allen, Director

\_\_\_\_\_  
Date

**Fire Prevention and Building Safety Commission**

\_\_\_\_\_  
James L. Greeson, Chairman

\_\_\_\_\_  
Date

**Approved by State Budget Agency:**

\_\_\_\_\_  
Zachary Q. Jackson, Director

\_\_\_\_\_  
Date

**Exhibit A**  
**To**

Contract # \_\_\_\_\_

**OVERVIEW OF AUTHORITY FOR  
THE FIRE PREVENTION AND BUILDING SAFETY COMMISSION CASES**

<p>A board or agency head (or an agency employee designated by the agency head) has ultimate authority (UA) over administrative matters. If an agency delegates UA to an OALP ALJ, the ALJ may issue a final order that resolves the administrative matter. If an agency does not delegate UA to OALP, the ALJ will issue a recommended order to the UA, and the UA will then issue a final order.</p>			
	The OALP ALJ does <u>not</u> have authority to issue a final order <sup>1</sup>	The OALP ALJ has <u>limited</u> authority to issue a final order <sup>2</sup>	The OALP ALJ has authority to issue a final order <sup>3</sup>
A party failed to appear for a hearing (default) or to take a required action in the case.	X		
Parties agree to settlement, including a stipulation of agreed dismissal, or an agreed motion to dismiss the case.			X
The petitioner requests to voluntarily dismiss the case.			X
The OALP ALJ is issuing a ruling on a motion for summary judgment that resolves all of the issues in the case.	X		X (ONLY FOR: Review of an Emergency Order)
The OALP ALJ is issuing Findings of Fact, Conclusions of Law, and a decision on the issue(s) in the case.	X		X (ONLY FOR: Review of an Emergency Order and Requests for Stay)

<sup>1</sup> Authority retained by the Ultimate Authority.

<sup>2</sup> Authority delegated by the Ultimate Authority by Memorandum of Understanding and board resolution. If the ALJ issues a Recommended Order and no objection is made by either party, and the Ultimate Authority does not elect to review the Recommended Order, then the ALJ shall issue a Final Order affirming the Recommended Order.

<sup>3</sup> Authority delegated by the Ultimate Authority by Memorandum of Understanding, board resolution, or board order.