



Council of American Mechanical &  
Electrical Engineers

# BEST PRACTICE



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**Tool No. 7-2: Agreement between MEP  
Engineer and Client for  
Professional Services**



## **CAMEE TOOL 7-2: Agreement between MEP Engineer and Client for Professional Services**

**ORIGINAL DATE: 2009**

**REVISED: 2013**

**THIS DOCUMENT WAS REVIEWED BY OUTSIDE LEGAL COUNSEL AND REVISED ACCORDINGLY IN 2013.**

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## Introduction

This document provides a sample agreement for use when the MEP Engineer will provide engineering services directly to a Client. This sample contract features:

- Letter Form of Agreement
- Exhibit A, Terms and Conditions of the Agreement
- Exhibit B, Scope of Services

The agreement may be used as a prime or consulting agreement between the Mechanical/Electrical/Plumbing/Fire Protection (MEP) Engineer and its client. The client could be any party, including the building owner, architect, other design consultant, or the MEP Engineer of Record (MEPR). The form may be modified to use the term MEPR when this is an accurate representation of the services being provided.

This Agreement is written as a Letter Agreement and can be reproduced on the firm's letterhead, if desired. If not using this Agreement in a letter form, delete the letter salutation, other references to a "Letter" of Agreement, and other indications of correspondence.

The section titled "Project Description," should describe the project as completely as possible, including: the number of stories, type of building, floor area, and a statement of the MEP systems, if you know or have been told what they will be. It should also include the date and description of any drawings or sketches provided to describe the project. It may be appropriate to include a legal description of the project, as some jurisdictions require this in order to comply with lien laws.

Once the method of compensation for engineering services has been agreed upon, you should cross out (or delete in your own firm's version) fee options and other information that are not applicable.

The Terms and Conditions do not specifically address modifications or reuse of electronic files. The MEP Engineer may want to address the electronic transfer of documents in a supplemental attachment.

**Note:** As with all documents that are intended to formalize contractual relationships, the guidance and advice of an attorney is advised regarding specific applications and jurisdictions. CAMEE strongly recommends that the user have its legal counsel, professional liability insurance advisor, and accountant review this document. No warranty of any kind is made with respect to this document including, without limitation, consequential damages incurred in connection with, or arising out of, the furnishing or use of this document.

# Agreement Between Client and MEP Engineer for Professional Services©

Prepared by the Council of American Mechanical and Electrical Engineers

Date:

Name of Client:  
Address of Client:  
Attention:

Dear:

We are pleased to propose the following agreement for providing Mechanical/Electrical/Plumbing/Fire Protection (MEP) engineering services on this project. This proposal will remain open for acceptance for \_\_\_\_\_ days from the date above.

## PARTIES TO THIS AGREEMENT

MEP Engineer (name and address)(hereinafter, the MEP):

Designated Representative:

Client (name and address):

Designated Representative:

## PROJECT

Project Name:  
Location:

## DESCRIPTION OF PROJECT

We understand that this is [is not] a Fast Track Project and will [will not] entail Multiple Bid Packages.

## SCOPE OF SERVICES

The services to be provided are described in Exhibit A, Terms and Conditions, and Exhibit B, Scope of Services.

## FEE ARRANGEMENT

Compensation for basic services shall be: [choose one of the following]

1. A lump sum fee of \_\_\_\_\_ dollars (\$ \_\_\_\_\_ . \_\_\_\_\_).
2. A fee equal to \_\_\_\_\_ % of the Construction Cost of the Project.

Progress payments for basic services in each phase shall total the following percentages of the total basic compensation payable:

Project Development	_____ %	Contract Documents	_____ %
Schematic Design	_____ %	Construction Administration	_____ %
Design Development	_____ %	TOTAL	<u>100</u> %

3. A fee calculated on an hourly rate basis per the following hourly rate schedule. At this time the estimated total fee is \_\_\_\_\_ dollars (\$ \_\_\_\_\_). The MEP Engineer shall not exceed this estimate by more than 10% without advance notice to Client.

The hourly rate schedule is:

Principal:	\$ _____	CAD Technician I:	\$ _____
Project Manager:	\$ _____	CAD Technician II:	\$ _____
Designer:	\$ _____	Clerical:	\$ _____
Other:	\$ _____	Other:	\$ _____

Reimbursable Expenses shall be billed at a multiple of \_\_\_\_\_ times the cost incurred.

An advance payment in the amount of [ \_\_\_\_\_ % of the total fee] [\$ \_\_\_\_\_] shall be paid upon execution of this Agreement. The advance payment shall be applied against the final invoice(s).

Additional Services shall be charged at the standard hourly rates listed above, or billed at a mutually agreed upon fee.

If Basic Services covered by this Agreement have not been completed within \_\_\_\_\_ months of the date hereof, through no fault of the MEP, the amounts of compensation set forth in this Agreement shall be equitably adjusted.

### **SPECIAL CONDITIONS**

### **AGREEMENT DOCUMENTS**

This Agreement with Exhibits A and B hereto and other documents listed below, if any, constitutes the entire integrated Agreement and supersedes all prior agreements and discussions. This Agreement may be amended only by a written amendment signed by both parties.

Other documents incorporated into the Agreement:

We have provided two copies of this [Letter of] Agreement to you. Please examine these documents, sign one copy and return it to us (along with the advance payment). Retain a copy for your records.

We are looking forward to working with you on this project.

### **SUBMITTED BY:**

**MEP Engineer:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name/Title)

### **ACCEPTED AND AGREED BY:**

**Client:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name/Title)

Date: \_\_\_\_\_, 20

This Agreement is effective on the date of Client's signature.

# **Agreement Between Client and MEP Engineer for Professional Services**

## **Exhibit A - Terms and Conditions**

This is an exhibit attached to and made a part of the [Letter of] Agreement dated \_\_\_\_\_, between

\_\_\_\_\_ and \_\_\_\_\_  
(MEP) (Client)

### **Section 1 - General**

#### **1.1 This Agreement**

- 1.1.1 These Terms and Conditions, along with the Agreement, and Exhibit B, Scope of Services, and other Agreement Documents form the Agreement as if they were part of one and the same document.
- 1.1.2 To the extent specific provisions in the Agreement, Exhibit B, and other Agreement Documents conflict with provisions of these Terms and Conditions, those specific provisions shall take priority over the relevant provisions of this Exhibit.
- 1.1.3 If a Prime Design Professional is also engaged by the Client to participate in this project, then the Client shall require that Prime Design Professional be responsible for determining and interpreting the needs of the Client, and for coordinating the services of the MEP and other design professionals.

#### **1.2 General Obligations of the MEP and the Client**

- 1.2.1 The MEP shall perform those professional engineering services as specified in Exhibit B and detailed in these Terms and Conditions. In rendering these services, the MEP shall apply the degree of skill and care ordinarily exercised by engineers performing similar services under similar circumstances at the time and place the services are rendered (Standard of Care). The MEP makes no other representation or warranty with respect to the services rendered hereunder, whether express or implied. Nothing in this Agreement shall be construed to establish a fiduciary relationship between the MEP and the Client.
- 1.2.2 The Client shall verify, in writing, that the contemplated project will be financed adequately, including provisions for contingencies, to accomplish the stated and desired goals and commitments.
- 1.2.3 The Client shall provide all criteria and full information with regard to its requirements for the Project. This shall include, but not be limited to, review and approval of design issues in the schematic design phase, design development phase, and construction documents phase. These approvals shall include a written authorization to proceed to the next phase.
- 1.2.4 The Client shall provide the MEP access to the site for activities necessary for the performance of the services. The MEP shall recommend to the Client, and Client shall provide, those geotechnical investigations, property surveys, reports and other data necessary for performance of the MEP's services.

- 1.2.5 The Client and MEP shall each designate, in writing, a person to act with authority on behalf of each with respect to all aspects of the Project.
- 1.2.6 The MEP shall submit a schedule for the performance of the MEP's services to the Client. This schedule shall include requirements for information to be furnished by the Client. The MEP shall provide its services in accordance with schedules agreed with the Client as expeditiously as is consistent with the Standard of Care. If the MEP is delayed by any cause beyond the MEP's reasonable control, including any act or omission of the Client, including Client's contractors or other design consultants, or by any adverse condition not reasonably anticipated or avoided, the schedule and time for completion of the MEP's services shall be extended for a time equal to the time of the delay.
- 1.2.7 The MEP shall be entitled to reasonably rely on the accuracy and completeness of services provided by Client's other design professionals and all information supplied by the Client that is necessary for MEP's performance of the services.
- 1.2.8 The MEP shall coordinate its services with those of its consultants, if any. The Client shall be responsible for coordinating the services of its other design professionals and contractors, if any, to minimize conflicts or misunderstandings.
- 1.2.9 The Client shall provide testing necessary to identify hazardous materials and pollutants, and shall provide test results to the MEP, and shall be responsible for remediation in accordance with the governing laws, if required.

### 1.3 Definitions

- 1.3.1 **Construction Cost** is the amount paid by the Client for construction of the building(s) and everything within five feet of the Building perimeter(s), excluding furniture, furnishings, and equipment.
- 1.3.2 **Fast Track Projects** are projects in which any portion of the drawings and specifications are released for pricing/bid/fabrication, or are submitted for building permit, prior to their completion.
- 1.3.3 **Mechanical/Electrical/Plumbing/Fire Protection Engineer of Record (MEPR)** is the MEP engineer who is legally eligible to seal the MEP documents for a building project. This seal acknowledges that the MEP has performed or supervised the analysis, design, and document preparation for the MEP Systems.
- 1.3.4 **Multiple Bid Packages** are bid documents which are submitted for phased construction of portions of the project under separate trade contracts.
- 1.3.5 **Prime Design Professional** is the leader of the design team charged with the design of a facility, either an architect or an engineer. The Prime Design Professional is responsible for determining and interpreting the needs of the Client and for coordinating the services of the other design professionals.
- 1.3.6 **Reimbursable Expenses** are expenses incurred directly or indirectly in connection with the Project such as, but not limited to, transportation, meals or lodging for travel, long distance telephone calls and facsimile transmissions, overnight deliveries, courier services, professional service sales taxes, the cost of reproductions beyond those normally required for coordination and information purposes, and the cost of outside professional services.



- 1.3.7 **Special Inspection** is inspection performed by a qualified person, approved by the building official, for the types of work requiring inspection per the governing codes and contract documents.

## **Section 2 - Basic Services**

### **2.1 General – The Basic Services of the MEP shall include the following:**

- 2.1.1 Analysis, design and preparation of drawings and specifications for the MEP Systems, as designated in Exhibit B.
- 2.1.2 Review of specified submittals pertaining to items designed by the MEP as more fully described in Section 6.4.2 below.
- 2.1.3 Site visits at intervals appropriate to the stage of construction, as defined by the Agreement, to observe and become generally familiar with the quality and the progress of the construction work relative to the MEP Systems and preparation of contract observation reports.

## **Section 3 - Additional Services**

### **3.1 General**

- 3.1.1 Services beyond those outlined under Basic Services may be requested. These services may be provided as Additional Services by the MEP under terms mutually agreed upon by the Client and the MEP. Additional Services may include, but not be limited to, the following:
- 1) Tenant-related design services.
  - 2) Field Investigation of existing buildings and structures, including surveys of existing construction.
  - 3) Studies of various schemes to accommodate special energy requirements.
  - 4) Services connected with the preparation of documents for alternate bids or for segregated agreements for phased or Fast Track construction.
  - 5) Continuous and/or detailed inspections of construction.
  - 6) Design for future expansion.
  - 7) Filing application for and obtaining a building permit.
  - 8) Preparation of a record set of drawings.
  - 9) Services resulting from changes in scope or magnitude of the project as described and agreed to under the Agreement.
  - 10) Services resulting from changes necessary because of a construction cost over-run which is outside the control of the MEP.
  - 11) Services resulting from revisions which are inconsistent with approvals or instructions previously given by the Client.

- 12) Services resulting from revisions due to the enactment or revision of codes, laws, or regulations subsequent to the execution of this Agreement.
- 13) Services resulting from change orders paid to construction contractors.
- 14) Services resulting from corrections or revisions required because of errors or omissions in construction by the building contractor or in design by consultants other than the MEP.
- 15) Providing recommendations regarding claims, disputes, or other matters relating to execution or progress of the work.
- 16) Services resulting from construction procedures over which the MEP has no control.
- 17) Services due to extended design or construction time schedules.
- 18) Service in connection with any public hearing, arbitration, or legal proceeding with respect to the project, including assisting in preparation for litigation or arbitration as witnesses or consultants.
- 19) Services resulting from damage as the result of fire, man-made disasters, or acts of God.
- 20) Review and design of alternate or substitute systems.
- 21) Review of additional shop drawing submittals or RFI's when occasioned by improper or incomplete submittals.
- 22) Attendance at construction progress meetings.
- 23) Overtime work required by the Client.
- 24) Services required to make changes resulting from value-engineering review or project peer review.

## **Section 4 - Fees and Payments**

### **4.1 Fees and Other Compensation**

- 4.1.1 Fees for Basic Services, Additional Services, and compensation for Reimbursable Expenses are set forth in the Agreement.

### **4.2 Payments on Account**

- 4.2.1 Invoices for the MEP's services shall be submitted, at the MEP's option, either upon completion of any phase of service or on a monthly basis. Invoices shall be payable when rendered and shall be considered past due if not paid within 30 days after the invoice date.
- 4.2.2 Advance payments, if applicable to this Project, shall be credited to the final invoice.
- 4.2.3 Any inquiry or question concerning the substance or content of an invoice shall be made to the MEP, in writing, within 25 days of receipt of the invoice. A failure to notify the MEP within this period shall constitute an acknowledgement that the service has been provided.

### **4.3 Late Payments**

- 4.3.1 A service charge will be charged at the rate of 1.5% per month or the maximum allowable by law on the outstanding balance of past due accounts. In the event any portion of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees. Payments on account will be credited first to any service charge and then to any outstanding balances.
- 4.3.2 In the event that any portion of an account remains unpaid 30 days after billing, the MEP may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, suspend or terminate the performance of all services.

## **Section 5 - Insurance, Indemnifications & Risk Allocation**

### **5.1 Insurance**

- 5.1.1 The MEP shall secure and maintain professional liability insurance, commercial general liability insurance and automobile liability insurance to protect the MEP from claims for negligence, bodily injury, death, or property damage which may arise out of the performance of the MEP's services under this Agreement, and from claims under Workers' Compensation Laws. The MEP shall, if requested in writing, issue certificate to the client confirming such insurance to the Client.

### **5.2 Indemnifications**

- 5.2.1 To the fullest extent permitted by law, the MEP and the Client mutually agree to indemnify and hold each other harmless from damages and losses caused by each party's respective negligent acts, errors or omissions in its performance under this Agreement, but only to the extent that each party is responsible for such damages and losses on a comparative basis of fault. This mutual indemnification shall apply to the respective officers, members, directors, partners, agents, employees, consultants and contractors of the MEP and the Client.
- 5.2.2 The MEP shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form. The Client shall indemnify and hold harmless the MEP and all of its personnel, from and against any and all claims, damages, losses and expenses arising from the presence, discharge, release or escape of hazardous waste or other contaminants at the site, except to the extent caused by the negligence of the MEP.
- 5.2.3 The Client shall require that its construction contractor(s) endorse commercial liability coverage to include the Client, the MEP and the MEP's consultants as additional insureds for claims caused in whole or in part by the contractor's negligent acts or omissions during the contractor's operations.

### **5.3 Risk Allocation**

- 5.3.1 In recognition of the relative risks, rewards and benefits of the project to both the Client and the MEP, the risks have been allocated so that the Client agrees that, to the fullest extent permitted by law, the MEP's total liability to the Client, for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement, from any causes, including, but not limited to negligence, errors, omissions, strict liability, breach of agreement or breach of warranty, shall not exceed the total amount of \$50,000, or the total amount paid to the MEP for the performance of its services, whichever is greater

## **Section 6 - Miscellaneous Provisions**

### **6.1 Reuse of Documents**

- 6.1.1 All documents including calculations, computer files, drawings, and specifications prepared by the MEP pursuant to this Agreement are instruments of professional service intended for the one-time use in construction of this Project. They are and shall remain the property of the MEP. Any reuse without written approval or adaptation by the MEP is prohibited. Further, due to the potential exposure to liability if documents are used without the MEP's involvement, the Client agrees, to the fullest extent permitted by law, to release, defend, indemnify and hold harmless the MEP from and against any claims, damages, losses and expenses including, but not limited to, reasonable attorney's fees, arising out of or resulting from the Client's reuse, or alteration of any such documents.

### **6.2 Opinion of Probable Construction Cost**

- 6.2.1 The MEP's evaluations of the Owner's probable project budget and any opinions of probable construction costs, if rendered as a service under this Agreement, will be made on the basis of the MEP's experience and qualifications and will represent the MEP's judgment as a design professional familiar with the construction industry. Because the MEP has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractor's methods of determining prices, or over the competitive bidding process or future market conditions, the MEP does not guarantee or represent that proposals, bids, negotiated prices, or actual construction costs will not vary from the opinions of probable construction costs prepared or agreed upon by the MEP. If the Owner wishes greater assurance as to construction costs, the Owner shall employ an independent cost estimator.

### **6.3 Hidden Conditions at the Site**

- 6.3.1 The MEP shall not be responsible for the investigation of conditions at any site that the MEP is not able to identify through reasonable visual observation. If the MEP has reason to believe that an existing mechanical, electrical, plumbing, or fire protection condition may be deficient, but hidden from view, the MEP shall notify the Client, who shall thereafter authorize and pay for all costs associated with the investigation of the condition and, if necessary, for all costs necessary to correct the condition. If the Client fails to authorize such investigation and correction after due notification, the Client is responsible for all risks associated with the condition, and the MEP shall not be responsible for the existing condition nor for any resulting damage to persons or property.

### **6.4 Review of Contractor's Work**

- 6.4.1 The MEP shall not supervise, direct, or have control over a construction contractor's work. The MEP shall not be responsible for the contractor's means, methods, procedures, techniques, or sequences of construction, nor for safety programs or procedures employed by the contractor on the job site. The MEP shall not be responsible for the contractor's failure to carry out work in accordance with the Client/contractor agreement.
- 6.4.2 If included in MEP's Scope of Services (Exhibit B), MEP shall review and take appropriate action with respect to shop drawings, product data, samples, and other submittals required under the Client/contractor agreement to be submitted by the contractor. The MEP's review shall be only for the limited purpose of ascertaining general compliance with the design concept for the Project and the information given in the drawings and specifications prepared

by the MEP. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions, quantities, weights, gauges, or fabrication processes, nor for substantiating instructions for installation or performance of systems designed by contractor, nor for coordination with the work of other trades. Review of a specific item shall not indicate acceptance of an assembly of which the item is a component. When professional certification, by other licensed professionals or the Client or contractor for performance characteristics of materials, systems, or equipment is required by the Client/contractor agreement, the MEP shall be entitled to rely upon such certification as verification that the materials, systems, or equipment will meet the performance criteria set forth therein.

## **6.5 Termination, Successors and Assigns**

- 6.5.1 This agreement may be terminated upon 10 days written notice by either party should the other materially fail to perform its obligations hereunder. In the event of termination, the Client shall pay the MEP for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.
- 6.5.2 The Client and the MEP each binds itself, and its partners, successors, executors, administrators, assigns and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations of this Agreement.
- 6.5.3 Neither the Client nor the MEP shall assign, sublet or transfer any rights under or interest in (including but without limitations, monies that may be due or monies that are due) this Agreement, without the written consent of the other, except as stated in the paragraph above, and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the MEP from employing such independent consultants, associates and subcontractors as he or she may deem appropriate to assist in the performance of services hereunder.
- 6.5.4 The MEP and the Client agree that the services performed by the MEP pursuant to this Agreement are solely for the benefit of the Client and are not intended by either the MEP or the Client to benefit any other person or entity. To the extent that any other person or entity, including but not limited to the Client's contractor(s) and/or any subcontractors and other design professionals, is benefited by the services performed by the MEP pursuant to this Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to this Agreement

## **6.6 Claims and Dispute Resolution**

- 6.6.1 With respect to any claims, disputes or other matters in question arising out of or relating to this Agreement, each party, without limitation, waives the right to claim consequential damages against the other.
- 6.6.2 All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be presented to mediation, subject to the parties agreeing to a mediator(s), as a condition precedent to the initiation of legal proceedings by either party. Such mediation shall be conducted under the auspices of the American Arbitration Association (AAA) or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by

submitting a formal, written request to the other party to this Agreement and to the mediator or mediation service. Agreements reached in mediation shall be enforceable in a court of competent jurisdiction.

- 6.6.3 This section shall survive completion or termination of this Agreement, but under no circumstances shall either party make any claim, including without limitation a demand for indemnity, or call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the principal place of business of the MEP.

## **6.7 Governing Laws**

6.7.1 This Agreement shall be governed by the laws of the principal place of business of the MEP.

6.7.2 Venue shall be in the same state as the MEP's principal place of business.

## **Section 7 - Supplemental Conditions**

# **Agreement Between Client and MEP Engineer for Professional Services**

## **Exhibit B - Scope of Services**

This is an exhibit attached to and made a part of the [Letter of] Agreement dated \_\_\_\_\_,  
between

\_\_\_\_\_ and \_\_\_\_\_.

(MEP)

(Client)