



Working with Contracts & Contractors

**TREE CITY USA®
BULLETIN**

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If there is a single commonality within municipal forestry today, it is the attempt to 'do more with less.' As city officials try their best to maintain or expand the trees that provide so many benefits in our communities, contracting almost always comes up as one of the ways to do this. A look at contracts and effective contracting is important both in urban forestry and for homeowners.

Contracting in urban forestry has been around since the days when John Davey and Francis Bartlett first hung out their shingles to provide commercial tree care in America. Contracting is part of every company, most municipalities and is – or should be – involved anytime a homeowner needs work done on trees by someone outside the family.

In most cases, the agreement between parties goes smoothly and provides mutual satisfaction. But sometimes things go very wrong. In other cases, tax payers' dollars could be saved through contracting instead of using in-house personnel, but if done without careful analysis, it may be the other way around.

Contracting for arboricultural services is the most common use of 'outside' help in urban forestry or home tree care. However, there is also assistance available for the broader management needs of urban forestry. For example, in Michigan, J. H. Hart Urban Forestry offers not only traditional procedures such as fertilizing, pruning, removals and stump grinding, but company personnel also serve as the urban foresters for the cities of Birmingham, Troy, Rochester Hills, Lathrup Village, and Royal Oak; and for the Village of Beverly Hills.

In this bulletin, we take a look at some of the ways contracting is being used and some considerations that can make this a successful part of tree stewardship.

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What is a Contract?

One would think that contracting is a simple matter, but like anything else of a legal nature, it can get very complicated. We are not attorneys and are not offering legal advice, but here are some basics that should be understood by municipal foresters, tree boards and homeowners.

CONTRACT DEFINED

According to United State Courts, a contract is “an agreement between two or more people that creates an obligation to do or not to do a particular thing.” Others add that it is “an agreement enforceable in a court of law.”

DOES IT HAVE TO BE IN WRITING?

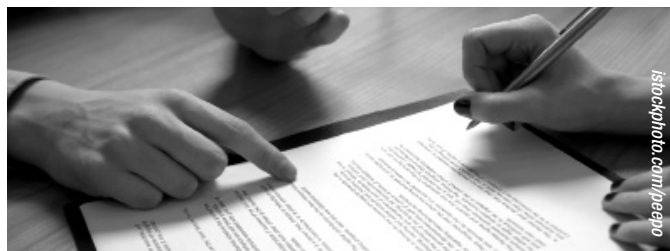
The answer to this question gets a bit murky. In general, the answer is ‘no.’ In fact, Brian Gilles of Gilles Tree Consulting in Kirkland, Washington, says, “I’m lucky enough to work 60 – 70 percent without contracts.” But this does not mean he has not made an agreement with clients. It means that he has made oral agreements except in the case of public agencies and when serving as an expert witness for an attorney.

Oral contracts are generally enforceable in a court of law. There are some matters, such as when transferring real property, for which state law or common law may require written contracts. With the exception of real property or long-term agreements, most arboricultural and urban forestry services do not fall under these requirements. That said, however, written contracts have the huge advantage of preventing misunderstandings. “Getting it in writing” offers both parties a clearer understanding of their obligations. If a dispute arises and the issue goes to court, the dangerous (for justice) result is avoided of facing a ‘he said, she said’ situation.

So, unless you have developed the kind of long standing relationships and a foundation of trust enjoyed by consultants like Brian Gilles, the best practice is to use a written form of a contract. And, to have it checked by an attorney before signing.

CONTRACTING WITH YOUNG PEOPLE

Sometimes college students or other young people take on tree or landscaping work as a source of income, either on their own or sometimes as employees. A fine point in contract law is that an agreement may be unenforceable if one of the parties is under the age of majority. This is usually considered to be 18, but may be 21 in some states. Again, an attorney should be consulted about state or local contracting laws and any nuances that may not be apparent to a lay person.



Contract law can be complicated, but by sticking to simplicity and clarity – and especially by using a written contract – the need for courtroom resolution can be avoided. In all cases, contracts should be reviewed by an attorney before signing.



The Pros and Cons of Contracting

There is no clear path to deciding what functions in a community should be contracted and what should be done by in-house staff. However, here are some of the advantages and disadvantages found by the American Public Works Association that should be considered when trying to make that decision.

FORESTERS/ARBORISTS

In-House Management

ADVANTAGES

- Deep ties within the community
- Available at a moment's notice to perform a wider variety of tasks
- Directly accountable to the citizens and the department head
- Usually has 'institutional knowledge/memory' (although in some cases this can be a disadvantage if it interferes with trying new ideas or 'thinking outside the box')

DISADVANTAGES

- May only be experienced in limited aspects of arboriculture and urban forest management
- Investment must be made in equipment for this position, such as a vehicle, computer, diagnostic tools, etc.
- Investment of time and funding for certifications, licenses, and training
- Not easily removed if performance is substandard

Contracted Management

ADVANTAGES

- Usually very experienced and knowledgeable on a wide array of pertinent subjects
- Can provide a high level of knowledge in specific areas such as tree risk assessment, tree valuation, ordinances, tree preservation techniques, etc.
- Usually is fully and pre-equipped with a vehicle, computer and necessary tools or instruments
- All pertinent certifications and licensing are already in place and training is separately provided

DISADVANTAGES

- Can be released more easily
- Flexibility in job assignments may be limited
- If used regularly or for an extended period of time, can be more expensive
- Administrative time must be provided for contract writing, monitoring, and invoice processing

CREWS AND WORK PRODUCTION

In-House Crews

ADVANTAGES

- More flexible for other work assignments
- Quality can be perfected through training over time
- Can respond quickly to emergencies
- Workforce is more stable
- Knowledgeable about the community and can be motivated by pride and residency
- No administrative time needed to write and oversee contracts

DISADVANTAGES

- Large investment in equipment and maintenance (for example, a lift truck and chipper)
- Workers are paid regardless of production quantity, quality and efficiency
- Difficult to release from employment
- Department is responsible for damage caused by crew actions
- Department is responsible for injuries and workman's compensation

Contracted Crews

ADVANTAGES

- Paid only for work performed and completed to specifications
- Labor is available for peak demands and special projects; no cost when work is not needed or weather is poor
- Equipment, tools, supplies, maintenance, repair and downtime of equipment is not the department's responsibility
- Insurance and workman's compensation is contractor's responsibility
- Supervision, training and certifications provided by contractor

DISADVANTAGES

- Liability for damage is responsibility of the contractor
- Work assignments are not as flexible; bound by contract specifications
- May not be as quick to respond to emergencies
- Administrative time is required for contract writing, monitoring and invoice processing

Successful Contracting

The goal in urban forestry is to ensure professional performance at the lowest possible cost, as efficiently as possible and with the greatest level of expertise. When contracting is the best way to go, it takes effort to have it go smoothly. Above all, says consultant Brian Gilles, is establishing trust. Here are suggestions from urban forestry professionals who have had successful experiences with contracting.

WHAT SHOULD BE INCLUDED IN A CONTRACT

Of course every contract must be written to address the specific job, although some communities have standing contracts for fast response after storms. In general, and in addition to the authorized names of the contracting parties and any 'boiler plate' required by the contracting organizations, most contracts in urban forestry should specify:

- ✓ **SCOPE OF WORK**, including not only what must be accomplished, but to what standards. Generally accepted practices in the green industry should be cited as outlined in the various publications of the American National Standards Institute (ANSI). Examples include planting, pruning, safety, fertilizing, construction management and lightning protection installation. These are readily available at the website of the International Society of Arboriculture (ISA).
- ✓ **LOCATION**, including how ownership of trees on property lines is locally defined. In the case of contracts between arborists and private property owners, it should be specified that the responsibility of assuring ownership of any trees to be treated is that of the property owner.
- ✓ **QUALIFICATIONS** and any required licenses, certifications or proof of other technical expertise, including specifying the use of ISA Certified Arborists and/or Tree Workers.
- ✓ **INSURANCE** that is required and who is responsible for damage, injury, employee benefits and liability.
- ✓ **TIME PERIOD** during which the work is to begin and be completed.
- ✓ **ANY RESTRICTIONS** on hours of daily operation or dates, such as holidays or special events.
- ✓ **WHO IS RESPONSIBLE** for notifications, such as above and underground utilities, traffic control and pedestrian safety.
- ✓ **PERMITS** for removal or other tree work may be required. Specify who is responsible for obtaining any permits.
- ✓ **ANY PROHIBITIONS** against or permission required for subcontracting.
- ✓ **PROTECTION** of existing trees and shrubs, degree of cleanup expected, and site restoration.
- ✓ **PRICES** and how payments will be made, such as what percentage up front, at specified intervals, and upon satisfactory completion.
- ✓ **AN 'OUT' CLAUSE** about how either party might terminate the contract and any subsequent consequences.



MANY THANKS TO THE CONTRIBUTORS ON THESE PAGES

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SOME COMMONLY CONTRACTED FUNCTIONS



Inventories



Stump grinding



Planting



Invasive insect control
(and preventative treatments)



Street tree pruning



Tree watering
and other new tree care



Nursery production



Overhead line clearance



Publicity and marketing



Utility line clearing



Tree removals

Voices of Experience

The professionals listed on page 4 were asked to offer tips for community officials based on their experience with contracts. Here is what they told us.

- It always helps to have a tree ordinance in place.
- Do not assume that contracting will be a way to save money. Look at all indirect costs, including contract preparation and other administration details. On the other hand, contracting works particularly well for special projects that would take municipal crews away from other needed work, and for temporary work that lasts for only part of the year.
- Try to schedule contracted work for the 'off season' when it helps the contractor and often provides better pricing.
- Hold a mandatory pre-bid meeting with all interested contractors. Go over requirements, answer questions, and visit the site when appropriate.
- Check credentials, certifications, references and examples of previous work. Require a certified arborist to be on site, especially during pruning operations.
- Remember that time is money to consultants and businesses. Be prepared in advance for meetings, including having site plans or other materials ready. Start on time and keep meetings as short as possible.
- 'Run interference' for the contractor by alerting the public to the project through mass media and/or door hangers. Also give instructions to the contractor for responding to the curious or sometimes hostile public in a positive way while working, including a handout that explains the work.
- Be certain that the individual who administers a contract: (a) knows enough about the work to provide intelligent oversight and without being intimidated by the contractor, but (b) lets the contractor do the work as agreed, and (c) does not become a bully because of his/her degree of authority.
- Inspect work regularly to prevent 'cutting corners' and ensure that specifications in the contract are being honored. Make prompt corrections if they are not.
- Process invoices promptly and pay contractors on time.



Boise Community Forestry

Contracting 'Free' Services

Idaho, like most states, has community forestry assistants who work for the state forester's office, often with financial support from the U.S. Forest Service. Gerry Bates serves as one of Idaho's three assistants and has about 150 communities within his portion of the state. Of these, 50 have attained Tree City USA awards, but in most cases they have not 'progressed' beyond the basic requirements for the award – despite the availability of technical assistance from Gerry. This is not a problem unique to Idaho.

In 2013, Gerry had a new idea that would be a little different from the usual publicity about his being available to help. He created a "Community Forestry Advisor Agreement," basically a contract, and mailed it and a cover letter to a targeted list of 11 communities. The only work required by an official was to complete the city's name on the 3-page form and have it signed. The rest of the document showed a start and finish date (with opportunity to extend), some limitations such as liability and extent of time provided or the number of visits, and conditions of how either party could terminate the agreement. It also spelled out the services to be provided:

- a. Employee education for pruning of young and mature trees
- b. Insect and disease identification and suggestions for appropriate control measures
- c. Assistance with completion of a tree inventory on public property
- d. Creation of a long-term community forestry master plan
- e. Prioritization of management needs as included in the master plan
- f. Training and support for the city's advisory tree board or committee
- g. Review of the tree ordinance and recommendations for enhancement
- h. Identification of high or extreme risk trees

Cost to the city: Free! There is no cost to the city for Gerry's time, travel, lodging, meals or office expenses. The city is only responsible for any tools, employee travel, copies, and legal fees they may deem necessary. All of this was previously available and is available to all cities in Gerry's territory, but use of the contract approach successfully got attention and yielded acceptance of the services by 7 of the communities the first year.



Communities can be eligible for points toward the Tree City USA Growth Award by initiating new practices such as contracting with neighboring communities to share a forester, equipment, or for similar activities that save money or provide additional expertise.



NONPROFIT CONTRACTING

Nonprofit organizations are increasingly offering their services as contractors. For example, Trees Atlanta offers to plant trees ranging from 1-gallon size to 6-inch caliper. Trees are purchased from commercial nurseries and planted mostly by volunteers. "(Contracting) helps nonprofits diversify funding sources and we are the best at what we do, so we definitely have something to offer," says Greg Lavine, co-executive director. His group plants trees under contract to the city, corporations and developers. Agreements range from oral and 1-pagers to lengthy documents usually required by cities, all checked on a gratis basis by attorneys who happen to serve on the organization's board of directors. Janette Monear, CEO of the Texas Trees Foundation, adds, "Contracting services is a way to diversify your revenue stream and build strong and productive public/private partnerships." Her organization works with homeowners' associations, developers and municipalities to provide services ranging from inventories and planning to planting and inspections.

A Note for Homeowners

The words no homeowner wants to hear after having tree work in the yard are, “No, ma’am, that was \$1,000 per tree, not \$1,000 for the whole job.” Or, “Hey, we did what you asked us to do. The tree is pruned but the debris is your responsibility.”

Although much of this bulletin is directed toward communities that use contractors or are starting to move in that direction, there are points throughout that are equally applicable to homeowners. Specifically, here is a checklist to use when making an agreement to have someone work on your trees.

- ✔ Use only reputable tree experts, preferably with a local address and a degree of permanency – not just someone who knocks on your door.
- ✔ The 4 ‘musts’: ISA arborist certification; proof of liability insurance that covers personal injury and property damage; worker’s compensation; and local references where work has been done. Do not settle for less.
- ✔ Get more than one estimate before agreeing to the work.
- ✔ For tree health questions or difficult jobs, it pays to hire an independent arboriculture consultant. Expect to pay for the person’s time, because his or her knowledge is the product.
- ✔ Carefully review (or prepare) the contract, using points made elsewhere in this bulletin as a guide for making sure you and the contractor are in agreement about scope of work, standards of performance, price and other conditions. Two-way communication is essential before signing.



Most contractors are honest, helpful and cooperative. Problems arise through misunderstandings that in most cases could be avoided through use of a contract.

FOR MORE INFORMATION...

Links to additional information about contracts and contracting may be found at arborday.org/bulletins and click on ‘Supplemental Resource Library.’

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