

Landscape Contractor; Do You Utilize Construction Project Management? (Landscape Contractor Standard of Care, Part 3)

In part three of the series of articles addressing landscape contractor standard of care, we examine the role of the landscape contractor during the construction process, the importance of construction project management, supervision, communication and coordination and landscape contractor deficiencies that may result in customer dissatisfaction and potential legal action.

In parts one and two of the series, we examined why a landscape professional is held to a higher standard of care, the importance of plans, specifications and written contract documents, see <http://landscapeexpertwitness.com/2013/11/01/landscape-contractors-work-satisfy-industry-standard-care/> to read the full article. Second in the series Landscape Contractor Standard of Care was a discussion of the pros and cons using a design build landscape contractor, the accuracy of proposals, and comparing the scope of services between competing bids. Read the full article at <http://landscapeexpertwitness.com/2013/12/03/pros-cons-landscape-design-build-contractor-landscape-contractor/>.

One of the consulting services I provide is litigation support as a landscape expert witness for defendant and plaintiff attorneys. In that capacity, I have consulted with several attorneys on landscape construction defect cases. The diversity of landscape, tree and plant related cases are surprising. However, most of the cases involving landscape contractors typically contain a common theme or deficiency that formed the basis of discontent that eventually turned into a lawsuit. The most common deficiencies are:

- Failure to provide a client with written contract documents.
- Failure to communicate with the client.
- Providing extra work without a client approved change order.

Whether for a defendant or plaintiff attorney, my role as a landscape expert witness is to examine and determine whether the landscape contractor satisfied the standard of care expected of a landscape professional.

With over three decades as a landscape contractor and land development professional, I find it inconceivable a knowledgeable, licensed contractor would stumble upon providing these seemingly basic items. What I have learned is landscape contractors often focus on the technical nature of their profession while not paying attention to the construction project management processes required for producing a successful project.

Why Does Construction Management Matter?

Construction management, also known as construction project management (CPM), involves the overall planning, coordination and control of a project from beginning to completion. CPM is aimed at meeting a client's requirement in order to produce a functionally and financially viable project.¹

In defining CPM, both the contractor and client are identified as necessary components to ensure the success of the construction management process. Successful CPM must rely on the coordination and communication between the contractor and client, the process works best when both parties participate as a team, shortcomings on either side of the team may result in miscommunication of crucial information, such as design, specifications, schedule, availability, budget, contract documents and change orders. Miscommunication may result in misunderstanding, which ultimately leads to a degradation of trust and respect, which may be precursor conditions to a lawsuit.

Whether for functionality, aesthetics, an event, or green sustainability, the client has a reason for wanting a new landscape installed. However, knowing they want a newly installed landscape versus how they want the new landscape to look are two separate realities. The client must rely on landscape professionals such as landscape architects and landscape contractors to guide them through the design and construction process. Once the design process is complete and a contractor is selected, it is incumbent upon the landscape contractor to initiate the construction project management process.

Depending on the type of client, team members or project stakeholders will vary. In large commercial or public works projects, project stakeholders are numerous, while a residential project may include only the client and landscape contractor. Regardless the size or number of stakeholders, once a construction contract is awarded, the landscape contractor controls the construction project management process. The contractor must be aware of and acknowledge the importance of his or her role as the project manager and accept responsibility for successful project fruition and customer satisfaction. Gaining client trust begins with the bidding process and must be maintained throughout the project duration. Top rated landscape companies understand clear, concise and frequent client communication is paramount in maintaining the close client-contractor relationship required to satisfy client expectations for a successful project.

The First Step

In my experience, the single greatest mistake made by the landscape contractor and client is failing to establish a written contract. This situation is discussed in the first article <http://landscapeexpertwitness.com/2013/11/01/landscape-contractors-work-satisfy-industry-standard-care/>, suffice to say, always start a project with a well written contract and supporting documents including landscape plans, sketches, diagrams, specifications, details and notes. These contract documents are an absolute requirement for successful construction management because they establish and define the contractor scope of work,

¹ http://en.wikipedia.org/wiki/Construction_management

what the assignment includes, (or excludes), the client budget, the construction schedule, project specifications, quantities and other important aspects easily forgotten or misunderstood when not documented in writing. Contractor reliance on memory in lieu of a written contract is illegal and reflects negatively on the professionalism of a landscape contractor. A one- page contract scrawled on a napkin (actually happened in a case) does not satisfy the industry standard of care. Perhaps an unlicensed gardener can function in this manner, but it is far below the industry standards for a landscape contractor to work without a well-defined contract.

Avoiding this deficiency is quite simple. Landscape contractors who are members of the California Landscape Contractors Association (CLCA), can easily obtain current, standardized landscape construction and maintenance contract documents from the online website. Below are two CLCA sample contracts:

COMMERCIAL LANDSCAPE CONSTRUCTION CONTRACT
(Not to be used for home improvement or new residential construction)

This agreement is by and between _____ hereinafter called Contractor and Owner

(Contractor's Name) _____ (Phone) _____
 (Home Address) _____ (City) _____ (Phone) _____
 (Work Address) _____ (City) _____ (Phone) _____
 (Job Location) _____ Address _____ City _____ State _____ Zip _____ Phone _____

Legal Description: Lot # _____ Tract # _____

Contractor shall furnish all labor, materials and equipment necessary to install items described below, at the above referred job address, per approved plans. (Signatures of an independent third party) _____

DESCRIPTION OF WORK: Contractor shall furnish material and install improvements as follows:

ADDITIONAL INFORMATION, EXCLUSIONS OR ADDENDUMS:

TIME FOR STARTING AND COMPLETING PROJECT: Work shall commence within _____ days after the last to occur of the following: (1) Receipt by the Contractor of all necessary building permits; (2) Receipt by the Contractor of notice from Lender, Bond Holder and/or Title Company of any third party liens or encumbrances required to be resolved prior to commencement of construction hereon properly recorded; (3) Contractor's Party has complied with all Terms and Conditions of the Agreement in date; or (4) Receipt of all construction funds paid to Escrow or Funding Control Service (if any). Subject to adjustment for the above conditions, work shall begin approximately on _____ with additional time to be allowed as detailed in Paragraph 7 of the Terms and Conditions attached hereto.

NOTICE TO THE CONTRACTING PARTY: (1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled in copy of this agreement. Contracting Party acknowledges that he/she has read and received a legible copy of this agreement given by the Contractor, including all Terms and Conditions attached hereto, before any work has been performed, and that he/she has read and received a legible copy of every document that the Contracting Party has signed during the negotiation.

CONTRACT PRICE AND MANNER OF PAYMENT: In consideration of materials, labor and services, Contracting Party agrees to pay the Contractor as set forth herein at _____ DOLLAR (\$ _____) payable according to the following schedule:

The Contracting Party warrants that he/she has sufficient funds per the above schedule and any payment due to be satisfied by the Contractor Party or representative or agent. All payments will be made upon presentation of invoice. Downer payments will be less interest at 1 1/2 percent per month (15 percent per annum) if any payment is not made within the _____ calendar days of the date of invoice. Contractor or Contracting Party, prior to commencement of construction shall collect and collect to be held in escrow or funding control service. Contractor or Contracting Party shall provide a copy of this agreement to the Contractor. In absence of an Escrow or Funding Control Service, funds will be paid directly to the Contractor in accordance with the progress payments schedule attached hereto.

This proposal shall be valid for _____ days from the date of presentation as shown below. To accept this contract, Contracting Party must sign and date below and deliver an original signed copy to the Contractor.

We have read, understood and agree to all terms of this contract, including the terms and conditions attached hereto, and we accept the proposal and agree to be so bound.

NAME OF CONTRACTOR _____ LICENSE # _____
 ADDRESS OF CONTRACTOR _____ PHONE # _____
 CONTRACTING PARTY'S SIGNATURE _____ DATE _____

RESIDENTIAL LANDSCAPE HOME IMPROVEMENT CONTRACT No. _____

This AGREEMENT shall be by and between _____ hereinafter "Contractor" and "Contracting Party" and collectively referred to as the "Parties".

Contractor's Name _____ License No. _____ Phone (_____) _____
 Business Address _____ City _____ State _____ Zip _____
 Phone Contracting Party's Name _____ Phone (_____) _____
 Home Address _____ City _____ State _____ Zip _____
 Work Address _____ City _____ State _____ Zip _____
 Job Address _____ City _____ State _____ Zip _____

Legal Description: Lot # _____ Tract # _____

The Notice of Cancellation may be sent to _____ (Contractor) at the following address:

A. Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed:

For projects involving a swimming pool, the project description also must include a plan and scale drawing showing the shape, size, dimensions, and the construction and equipment specifications. If this project involves a swimming pool, this information appears on an attached document.

B. Additional Information, Exclusions or Addendums:

The work shall include the descriptions contained in the following attachments which are incorporated herein by reference and by such incorporation become part of this Agreement:

- Any Shop Drawings as supplied by Contractor with notations as specified on shop drawings.
- Any Plans or Specifications specifically governing Contractor's Work submitted by Contractor by Contracting Party before execution of this Agreement.
- A Notice concerning commercial general liability insurance is attached to this contract.
- A Notice concerning Workers Compensation Insurance is attached to this contract.

Other _____

A substantial commencement of the above described work shall be deemed to be delivery of any materials to the Project or physical performance of any work by Contractor or its agents, employees, or subcontractors, whichever occurs first at the jobsite.

C. Contract Price: Total contract price to be: \$ _____
 Finance charge (if any): \$ _____
 Downpayment (if any): \$ _____

THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE WHICHEVER IS LESS.

SCHEDULE OF PROGRESS PAYMENTS

WORK OR SERVICE PERFORMED	AMOUNT DUE ON COMPLETION
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
5. _____	\$ _____

The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.

The Importance of Communication

In a contractor-client relationship, hearing a client state "I left all the decisions to the landscape contractor" indicates a lack of communication and a breakdown in the construction project management process. A landscape contractor should never be left with making client decisions. Construction is a fluid, constantly changing process. Field conditions might be very different than information contained on a landscape plan. Materials and plant stock might not be available; weather conditions might interfere with a particular operation. An issue that requires a construction change or impact the construction schedule may result in a cascading series of changes to the contract price and construction schedule. Projects properly planned and schedules rigorously maintained enable the landscape contractor flexibility in rearranging construction operations to meet daily management and operational demands.

When a glitch inevitably occurs, the contractor should be able to immediately identify the problem, understand the consequences, and devise alternate strategies and pricing on how to manage the conflict. The contractor should inform and carefully explain the problem and various priced solutions that enable the client to make an informed decision. Field work can be very frenetic and time constraints might challenge the contractor to forego typical lines of communication, or a client might not have the time to fully listen to the contractor explain a problem. When field situations arise that derail the proper lines of communication between the contractor and client, misunderstanding and construction mistakes result in client dissatisfaction and increased friction between the client and contractor.

When a contractor makes unapproved design, field and construction change decisions without discussing the issues with the client, they violate the client-contractor relationship and leave themselves vulnerable to future legal action.

Coordinate

So much of CPM demands constant project coordination. While the client may only witness the daily field construction activities, they may not be aware of the tremendous amount of construction coordination required to facilitate the fieldwork. The project manager is the individual ultimately responsible for coordinating the various aspects of a given project.

The project manager is responsible for fully understanding all aspects of the project, such as how the project was bid and priced, tentative schedule, materials and equipment required, long lead time for purchasing, deliveries, and labor to staff the job. In order to accomplish this, the manager must communicate with various team associates including the project estimator, purchasing agent, operations manager, general superintendent, field foreman and when appropriate, the company owner.

Since the project manager is the one person who is fully knowledgeable of all aspects of the project, the experienced manager is critical for successful implementation of construction project management.

Unfortunately, I have observed landscape contractors who appear to operate in a haphazard, day to day manner with little evidence of forward planning let alone construction project management. The contractor might visit the site in the morning; talk with the foreman for a few minutes, then leave, onto the next job, ignoring the client. Logistics are overlooked, incorrect materials get shipped, and the foreman doesn't understand the scope of contract work and cannot or will not communicate with the client. Meanwhile, the client has decided to let the contractor make all of the decisions! These conditions usually result in busted schedules, cost over-runs, unhappy client and future lawsuit.

Of singular importance is the construction schedule. Schedules can be as simple as a start and finish date, or much more detailed and refined. I have found using a critical path

construction schedule as the most efficient and effective means to manage, control and adjust a project schedule. The term “critical path” identifies the flow of events from start to completion whereby each project function is predicated upon completing a predecessor task. For example, a tree cannot be planted until it is delivered to the jobsite. If the delivery is delayed, then so to is the planting function. When a critical path schedule is properly developed, any delay to a predecessor task will cause dependent tasks to be delayed, which ultimately may extend the project completion date.

For this reason, it is vital for the landscape contractor to develop and maintain a detailed construction schedule in order to understand the impact of a delay or change in work assignment. Once a project starts, the client wants the work to be completed as soon as possible. They rely on the contractor provided construction schedule (usually one of many contract documents) and fully expect the contractor to complete the work when they were promised. For this reason, top tier landscape contractors pay close attention to events impacting the schedule and maintain direct and daily communication with the client to manage client completion expectations.

Supervision

The company Owner might make a daily visit to the jobsite or not, they may leave it to the project superintendent to manage the job. The superintendent might rely on his or her job foreman to manage the daily field construction aspects of the job. With differing personnel working a jobsite, the landscape contractor must designate and maintain a jobsite foreman or superintendent for daily construction management and liaison with the client. It is imperative the company representative speak the language of preference of the client. A Spanish speaking point of contact unable to communicate with an English-speaking client is a recipe for disaster. Successful landscape contractors understand the importance of providing a jobsite point of contact who can relay information between the client and contractor in an efficient, effective, professional manner. Most public agencies and commercial projects require an English-speaking company representative which is stated in their contract documents.

Field construction work is constantly changing, creating a challenging environment for the project superintendent or foreman. Project success is often predicated on the performance of jobsite superintendent who not only manages and supervises the field workers, but must also coordinate with administrative staff, other contractors, project stakeholders and of course, the client. All too often, I have read depositions of landscape contractors who had “a guy” supervising the workers who could not speak English, did not understand the scope of work, did not have a copy of the contract or even landscape plans, failed to record important information, and was intimidated or not interested in speaking with the client. Substandard field supervision inevitably results in delayed schedules and costs far in excess of the original contract, conditions found in many construction defect legal cases.

Contract Management and the Change Order

Client concerns, field conditions, site conditions, suppliers, vendors, and manufacturers all play a role in field construction activities. Conditions or client expectations may create changes to the original contract scope of work. When either the landscape contractor or client determines a change to the construction contract is required, a properly executed construction change order is mandatory.

The importance of developing a written change order that documents client requested extra work couldn't be overemphasized. Extra work is work not included in the original proposal and written contract, (one of many reasons for having a written contract). The contract defines what is included in the proposal; materials and services not contained within the contract constitute "extra" work. The contractor is not responsible for providing extra work unless an agreed upon change order is executed. A well-informed project superintendent or foreman understands what is included in the contract scope of work. By understanding what is included, field personnel are properly educated and can discuss a client request for "extra" product or service that is not included in the contract and can react accordingly.

With field activities moving at a rapid pace, it is tempting to proceed with extra work without formalizing the pricing and gaining client approval for the extra work. Client requested extra work and client approval for the extra work are two very different events. The client request is not approval to proceed with the work. A landscape contractor proceeding with extra work without a written change order does so at his or her own risk and peril, the client is under no obligation to pay for work not included in a contract. A properly executed change order that informs the client of the exact contract changes and associated pricing and with client approval, becomes part of the contract documents.

CHANGE ORDER

PROJECT NAME _____	DATE _____
PROJECT LOCATION _____	CHANGE ORDER # _____
OWNER'S NAME _____	EXISTING CONTRACT/SUBCONTRACT # _____
DATE OF EXISTING CONTRACT/SUBCONTRACT _____	
<small>The information in this column pertains to the contractor or subcontractor who will perform the work specified in this change order.</small>	
NAME _____	<small>The information in this column pertains to the person who is responsible for authorizing the work specified in this change order. (For example: the owner, if the prime contractor will perform the work or have it performed by a subcontractor.)</small>
ADDRESS _____	NAME _____
CITY/STATE/ZIP _____	ADDRESS _____
PHONE # _____	CITY/STATE/ZIP _____
FAX # _____	PHONE # _____
E-MAIL _____	FAX # _____
E-MAIL _____	
We hereby agree to make the change(s) specified below:	
<div style="text-align: center; font-size: 48px; opacity: 0.3; pointer-events: none;">SAMPLE</div>	
<small>(If figure is being printed from a non-digital file, the contract price is increased / decreased (circle one) by \$ _____ Payment is due immediately upon completion of the work called for in this change order.</small>	
<small>Add / Reduce (circle one) fee _____ (attach details to this contract completion date.</small>	
<small>The existing contract is incorporated into this change order as if typed in it in full. This change order is governed by the original contract to the extent that it is unchanged.</small>	
SIGNATURE OF CONTRACTOR/SUBCONTRACTOR PERFORMING THE WORK _____	SIGNATURE OF INDIVIDUAL AUTHORIZING THE WORK _____
LICENSE NUMBER _____	LICENSE NUMBER IF APPLICABLE _____
DATE _____	DATE _____

THIS FORM IS PUBLISHED BY THE CALIFORNIA LANDSCAPE CONTRACTORS ASSOCIATION, INC.
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FORM 111 (2015)

Summary

Effective construction project management (CPM) requires overall planning, coordination and control of a project from beginning to completion. CPM is aimed at meeting a client's requirement in order to produce a functionally and financially viable project. A landscape contractor may ensure they meet the industry standard of care through daily communication, coordination, supervision and contract administration. In so doing, project success is greatly enhanced.

Client satisfaction is often based on schedule and budget. The goal of the landscape contractor should provide a client superior service and product on time, on budget. Successful landscape contractors understand the importance and utilize CPM to avoid construction pitfalls and communicate to maintain an enduring client relationship and avoid future legal action.

Bibliography

The commercial, residential and change order forms are samples from:
California Landscape Contractor Association, Inc. website at
http://clca.org/clca/clca_home.php, 1491 River Park Drive, Suite 100, Sacramento,
CA. 95815, 2012 CLCA