A tale of two cities and indemnification

By Rachel Roberts

When executing a project and contracting the work, the tasks are in abundance. One of WCIA's member cities began an overlay project in November, and unlike other road projects, a portion of this project would take place in a neighboring city which was also a WCIA member.

During the course of the project, a claim arose from a third party who claimed the contractor's work had damaged their vehicle. City A was leading the project and City B was the owner of the small portion of road where the incident occurred. This brought to light many questions once a claim was filed. Questions such as who was responsible for the damage, who had contractual protection, and how strong was that contractual protection? WCIA needed to gather all contracts and agreements that were in place.

City A presented the project to City B and City B agreed to fund their portion. The funding was for City A to include a small portion of road outside of City A limits. City B was not involved in the bidding process, contracting, or project work and considered this to not be a City B project. City B received no reports of any hazards or concerns within the project limits until a claim was presented in November.

A claim was filed due to a large utility cut located in the lane of travel. A vehicle impacted the cut and was damaged upon impact. The utility cut was in the city limits of City B and the tort claim was filed with City B. WCIA received the claim with details that this was a City A project and City B had not been involved with any road issues at this location. The utility cut was on the portion of road owned by City B. The legal standard for issues on a roadway comes from *Keller v. City of Spokane,* the City has a duty to keep the streets "reasonably safe for ordinary travel." This is a City A project, on a City B road, with a third party contractor and a party that sustained damage to their vehicle.

City A and City B had created an interlocal agreement to fund the project, but when City A went to contract with the road contractor, City B was not written into the contract indemnification language. While WCIA was able to point the third party to the contractor as the cause of the loss, City B would have been much better protected if City B also had contractual assurances from the contractor that the contractor would protect them from claims and lawsuits.

WA cities Insurance Authority

If the third party pressed this claim, or in the event the injury had been much more substantial, the project's general liability carrier would not provide City B with any protection. While WCIA would defend our member in this claim, the risk to pooled assets could be avoided by following WCIA's contract guidance. Whenever a third party is doing work on a member's behalf, even if contracted through a neighboring municipality, the member should seek contractual protections that include indemnification language and a requirement that the member be listed on their insurance policy. This gives the member contractual rights to be protected by both the contractor and/or their insurer.

While these situations are rare, the result can vary based on what is or is not written in the contract, interlocal agreements, and certificate of insurance. While the portion of road outside the city limits was small, it could have created a very large issue. WCIA offers contract review and guidance to help members avoid situations like this one.