

Think twice: Risk transfer for private work in city right-of-way

by Jason Barney

Often contractors or private project owners may perform work in the city right-of-way (ROW) and accidents arising out of the work may not directly implicate the city as project owner; they may still implicate the city under traditional tort theories. Indemnity agreements and additional insured requirements should still be required from private project owners when issuing right-of-way permits or otherwise allowing work to be performed in the city ROW or property.

A recent claim provides a helpful example. A private business hired a contractor to expand its parking lot egress across a city sidewalk. Defects from the private construction caused injuries to a sidewalk user. While this was not a public project, the city properly implemented its permitting requirements¹ and was able to tender the injury lawsuit to the contractor's insurer, avoiding a payout on its loss run.

Consider that these indemnity and insurance requirements may not apply to private projects which do not implicate city property or ROW, such as building remodeling projects wholly contained within a private residence. The exposure mitigated by the indemnity and insurance requirements is for private work done along or across public ROW, generally where a municipality has a non-delegable duty to maintain reasonably safe premises.

See sections ADM.21 and PWK.01 in your Liability Resource Manual at <http://www.wciapool.org/member-resources> for additional practice pointers on risk transfer.

¹ Bothell Municipal Code Chapter 17.20 Public Area Use Permits