


Legal Memorandum

To: Mayor and Common Council

Cc: City Engineer and Director of Public Works

From: Stephen F. Matty, City Attorney 

Date: August 14, 2014

Re: Legistar No. 14-0915
Relocation agreement: Xcel Energy (NSP) Oak Street bike bridge BNSF

The proposed agreement, submitted to the City of La Crosse by Northern States Power Company (Xcel Energy), to relocate Xcel Energy facilities in order to facility a bicycle and pedestrian bridge for Oak Street over BNSF railroad facilities contains an indemnity provision that might be interpreted as having the City of La Crosse waive or release certain immunities and liability limitations provided to it under Wisconsin law. Accordingly, it is recommended that paragraph 6 of the Xcel Energy's proposed agreement be amended as follows to better protect the City of La Crosse and its taxpayers:

REQUESTOR will indemnify and hold XCEL ENERGY harmless from and against all claims, damages, liabilities, costs and expenses (including reasonable attorney's fees) arising in connection with the relocation project; except such claims, liabilities, costs and expenses (including attorney's fees) caused by the gross-negligence and/or willful misconduct of XCEL ENERGY.

XCEL ENERGY will indemnify and hold REQUESTOR harmless from an against all claims, damages, liabilities, costs and expenses (including reasonable attorney's fees) arising in connection with the relocation project; except such claims, liabilities, costs and expenses (including attorney's fees) caused by the negligence and/or willful misconduct of REQUESTOR.

Nothing in this Agreement shall be construed to waive either party's limitations of liability and/or immunities available to it pursuant to Wisconsin Statutes and other applicable law. The indemnity obligations in this Agreement are conditioned upon the following: (a) the aggrieved party shall promptly notify the indemnifying party in writing of any claims, damages, liabilities, costs and

expenses within five (5) days of discovery; (b) the indemnifying party shall have sole control of, and the aggrieved party shall reasonably cooperate in all respects, in the defense of any claims, damages, liabilities, costs and expenses as well as all related settlement negotiations; and (c) the aggrieved party shall not make any admission or disclosure or otherwise take any action prejudicial to the indemnifying party except as required by law. The parties represent that, as of the effective date of this Agreement, neither party has any notice or knowledge of any claims, damages, liabilities, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement. Notwithstanding, neither party shall be liable for indirect or consequential damages to the other party, including, without limitation, any loss of revenues, whether caused by the negligence of either party or not.
