

CHAPTER 6 - CABLE COMMUNICATION SYSTEMS

Sec. 6-82. Protection of City against liability.

- (a) *Indemnification.*
- (1) Licensee shall fully indemnify, defend and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities and judgements for damages, including but not limited to, expenses for legal fees, whether suit be brought or not, and disbursements and liabilities incurred or assumed by City in connection with:
- a. Damage to persons or property, in any way arising out of or through the acts or omissions of Licensee, its servants, officials, agents, attorneys, representatives or employees;
- b. Requests for relief arising out of any Licensee action or inaction which results in a claim for invasion of right of privacy, for defamation of any person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or of any other right of any person, firm or corporation;
- c. Any and all claims arising out of Licensee's failure to comply with the provisions of this Chapter or a License or any federal, state or local law, or regulation applicable to Licensee or the Cable System;
- d. Any and all disputes arising out of a claim by any party other than City wherein damages or other relief is sought (i) as a result of the City's Cable System licensing of Licensee or (ii) as a result of the renewal or non-renewal of Licensee's Cable System License.
- (2) If a lawsuit covered by the provisions of Subsection (a)(1) be brought against City, either independently or jointly with a Licensee, or with any other person or municipality; the Licensee, upon notice given by City, shall defend City at the cost of the Licensee. If final judgment is obtained against City, either independently or jointly with Licensee or any other defendants, the Licensee shall indemnify City and pay such judgment with all costs and attorneys fees and satisfy and discharge the same.
- (3) City shall cooperate with the Licensee and reserves the right to participate in the defense of any litigation.
- (4) The City is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives and/or employees.

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- (5) A Licensee shall make no settlement in any matter identified above without the City's written consent, which shall not be unreasonably withheld. Failure to inform the City of settlement shall constitute a breach of the License and the City may seek any redress available to it against the Licensee whether set forth in this Chapter or under any other municipal, state or federal laws.
 - (6) All rights of City, pursuant to indemnification, insurance, letter of credit or performance bond(s), as provided for by this Chapter, are in addition to all other rights the City may have under this Chapter or any other Chapter, rule, regulation or law.
 - (7) The City's exercise of or failure to exercise all rights pursuant to any Section of this Chapter shall not affect in any way the right of the City subsequently to exercise any such rights or any other right of City under this Chapter or any other Chapter, rule, regulation or law.
 - (8) It is the purpose of this Section to provide maximum indemnification to the City under the terms and conditions expressed and, if there is a dispute, this Section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by the Licensee.
 - (9) The provisions of this Section shall not be dependent or conditioned upon the validity of this Chapter or the validity of any of the procedures or agreements involved in the award or renewal of a License, but shall be and remain a binding right and obligation of the City and a Licensee even if part or all of this Chapter, or the grant or renewal of a License, is declared null and void in a legal or administrative proceeding. It shall be expressly stated in a License, that it is the intent of the Licensee and City, upon the effective date of the License, that the provisions of this Section survive any such declaration and shall be a binding obligation of and inure to the benefit of the Licensee and City and their respective successors and assigns, if any.
- (b) *Comprehensive Liability Insurance.*
- (1) Upon acceptance of a License, the Licensee shall file with the City Clerk and shall thereafter during the entire term of such License maintain in full force and effect, at its own expense, a general comprehensive liability insurance policy or policies which shall insure Licensee and provide primary coverage for the City, its officers, boards, commissions, agents and employees, against liability for loss or liability for personal injury, death, property damage (both automobile and non-automobile caused), or other damages. Such policy or policies shall include insurance against damages from unfair competition, copyright infringement (common law or statutory) and a failure of Licensee to secure consents, occasioned by any activity or operation of Licensee under

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such License, and regardless of any claimed or actual activities of City, its officers, boards, commissions, agents and employees. The City Council, in any License granted, may waive the requirement for insurance from one or more perils mentioned in the last preceding sentence upon a finding that such insurance cannot be procured or cannot be procured at a reasonable cost, and in connection there with may reduce the otherwise required limits on coverage hereafter set forth. Such policy or policies shall be issued by a company approved by the City Manager and shall be in a form approved by the City Attorney, with minimum combined single limits of liability coverage in the amount of three million dollars (\$3,000,000). The policy or policies shall name the City, its officers, boards, commissions, agents and employees as additional insured and contain a provision that a written notice of any cancellation, modification or reduction in coverage of said policy shall be delivered to the City Clerk thirty (30) days in advance of the effective date thereof. No License granted under this Chapter shall be effective unless and until each of the foregoing policies of insurance as required in this Subsection has been delivered to the City Clerk. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this Subsection.

- (2) The City Council may require increases in the amount of types of coverage no more frequently than every three (3) years, based on increases in the CPI, so as to ensure full protection of the City of Peoria and the public. The Licensee shall have six (6) months from the date of notification from the City Manager to comply with any increase.
- (3) A Licensee may self-insure the above-described policy overages if such Licensee or its parent is of sufficient financial standing to reasonably provide such insurance. A Licensee that elects to self-insure shall file with the City a Certificate of Insurance as specified by the City.

(Ord. No. 95-13, 3/7/95, Enacted)