CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 14-27

A RESOLUTION OF THE TIGARD CITY COUNCIL APPROVING GOOGLE HUT LICENSE AGREEMENT TEMPLATE.

WHEREAS, in mid-February 2014, Google Fiber Oregon ("Google") approached the City of Tigard and five other cities in the Portland Metro Area (Beaverton, Gresham, Hillsboro, Lake Oswego and Portland) ("Cities") to determine best options for building a fiber optic network which could deliver internet speeds up to 1Gigabit; and

WHEREAS, Google is conducting a detailed study of local factors that could affect construction of a project of this scale and speed; and

WHEREAS, Google desires to develop a network in the Cities by leasing public property on which to site structures, known as Fiber Huts, which will house the components necessary for the network; and

WHEREAS, Google reports Fiber Huts are 10×30 foot structures that house the telecommunications and fiber interface equipment necessary for them to provide high-speed internet with each hut supporting about 20,000 homes. In order to build the fiber optic network, Google anticipates placing one or two huts within the Tigard city limits; and

WHEREAS, Cities determined it is in the best interest of their respective communities to negotiate a template for Fiber Hut License Agreements which use common language for the region while also allowing for community and site-specific needs to be addressed.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council's willingness to enter into the Google Hut License Agreements is established on the following understandings:

A. Google, after obtaining the appropriate legal rights, has noted their intention to incrementally construct and operate a fiber optic network to provide fiber to residential broadband service users in the City, offering upload and download speeds of up to 1Gigabit per second.

B. Google's fiber network will need various sites for locating huts. The significant technological improvements in the proposed state-of-the art fiber optic network to Tigard residents, together with other identified public benefits, serve as material inducement for Tigard Council's willingness to work with Google in locating Fiber Huts on City-owned property.

C. Google's use of huts sited on City-owned property will not interfere with or limit City's right to enter, access, and use the remainder of City's property.

SECTION 2: The Tigard City Council directs City staff to begin franchise agreement negotiations with Google under Tigard Municipal Code (TMC) Chapter 5.12 "Cable System" or TMC Chapter 15.06 "Franchised Utility Ordinance".

SECTION 3: The Tigard City Council approves the Google Hut License Agreement template (Exhibit A) and understands the 'Exhibit B portion' of the agreement will be negotiated on a site-by-site base.

SECTION 4: The Tigard City Council directs staff to select the most appropriate City property on which to site the Fiber Hut and to continue negotiations with Google on site-specific requirements for the property.

SECTION 5: This resolution is effective immediately upon passage.

PASSED: This 10th day of June 2014.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

CITY OF TIGARD RESOLUTION EXHIBIT "A"

Dated June 10, 2014

NETWORK HUT LICENSE AGREEMENT [TIGARD]

This Network Hut Housing License Agreement ("Agreement") is entered into by the City of Tigard, Oregon ("City"), a duly existing, home-rule incorporated municipality of the State of Oregon and the Google Fiber Oregon, LLC, an Oregon domestic limited liability company ("Licensee"). City and Licensee agree to the terms and conditions set forth below in this Agreement.

In consideration of the mutual covenants, terms and conditions and remunerations herein provided, and the rights and obligations created hereunder, the Parties agree as follows:

1. **Allowed Use.** Licensee needs rights to occupy and use various real property sites that may be owned by the City ("City Property"). Licensee shall use the sites only for the installation, operation, and maintenance of Licensee's structures that will house network equipment and fiber ("Network Hut") solely as a part of Licensee's fiber optic network and for no other uses. The construction of each Network Hut will be based on the specifications described in Exhibit A to this Agreement, which may be amended by mutual written agreement of the parties. This Agreement shall not be amended or modified except as agreed in writing signed by duly authorized representatives of the parties.

2. **Location of Sites for Network Huts.** Licensee will identify and propose to the City the location of various City owned sites. Licensee and City will work together to identify and agree upon specific Network Hut Sites within the City Property. Licensee will accept the Network Hut Sites "as is." Upon notice to, and prior written consent from City, Licensee may arrange to enter City Property at reasonable times designated by City to perform non-invasive surveys, tests and other engineering procedures at proposed Network Hut Sites if necessary to determine that Licensee's use of the proposed Network Hut Site will be compatible with Licensee's engineering specifications, system design, operations and governmental approvals. City agrees to reasonably cooperate with Licensee to allow Licensee to perform these activities. Nothing in this Agreement requires the City to agree to use of any particular City Property as a Network Hut Site. City agrees that it shall not unreasonably interfere with Licensee's ingress and egress to and from Licensee's Hut Sites. Licensee agrees that it shall not unreasonably interfere with City's ingress and egress to and from the remainder portion of the City Property. When Licensee and City agree upon specific sites, the parties will complete and sign the form attached as Exhibit B to this Agreement ("Site Terms") for each site ("Network Hut Site"). The Site Terms include a legal description of the Network Hut Site, the fees to be paid for use of the site and any other special terms or requirements applicable to the Network Hut Site. City will have the right to enter upon and inspect any Network Hut Site for fire, safety or emergency purposes, in which case City will give Licensee notice as soon as practicable, not to exceed forty-eight (48) hours after the inspection. Nothing herein constitutes a waiver of the City's regulatory authority to otherwise enforce any laws applicable to the Network Hut Sites. Licensee's occupancy and use of each Network Hut Site will be subject to this Agreement, including the terms set forth in the applicable Site Terms.

3. **Licensee Rights and Obligations.** City grants to Licensee the right to access, enter, occupy and use each Network Hut Site at any time for the purpose of constructing, operating and maintaining each Network Hut, subject to any site specific provisions in Exhibit B. No third party collocation or use of the Network Hut Site shall be allowed. City grants these rights solely to the extent it has such rights, title and interest in to the Network Hut Site, without any express or implied warranties. Licensee will obtain all applicable licenses, permits, land use approvals and other authorizations required to construct, operate and maintain the Network Hut and offer Licensee's services. The construction of each Network Hut will be based on the specifications described in Exhibit A, subject to any modifications that may be required by land use approvals and other legal requirements. Licensee will construct the Network Hut in accordance with all applicable laws and permitting requirements. Licensee will use and maintain the Network Hut Site in accordance with all applicable laws and permit requirements, including all environmental and hazardous material regulations. Licensee will keep the site secure and reasonably free from debris, litter and graffiti on an ongoing basis.

4. **Effective Date and Term.** This Agreement is effective on the last date it has been signed by both parties ("Effective Date"). The initial term of the Agreement shall be fifteen (15) years from the Effective Date. Following the initial term and any Renewal Term, this Agreement may be renewed in a new agreement, subject to any applicable notice and City Council approvals, by mutual agreement ("Renewal Option") for successive two (2) year periods ("Renewal Term"). The parties shall notify each other at least ninety (90) days prior to the expiration of the Agreement or any renewal period of their intent with respect to such renewal.

Each Renewal Term shall be on the same terms and conditions as set forth in the License, unless City and Licensee agree to any modifications to the terms and conditions in writing. Upon expiration of any Renewal Term of the License, should City and Licensee mutually agree in writing to do so, the License may be extended for one more additional Renewal Term or the License may continue on a month-to-month basis, as described below.

If Licensee remains in possession of all or any part of the Network Hut Sites at the expiration or termination of this License, or has otherwise failed to remove all of its equipment and facilities, upon prior written consent from City, Licensee's possession may continue on a month to month basis, which may be terminated by thirty (30) days advance written notice by the party seeking termination to the other party. During such month to month tenancy, Licensee shall pay City one hundred percent (100%) of the License Fee for such Network Hut Site in effect at the expiration of this Agreement (including any Renewal Term), on a monthly basis. Licensee shall be bound by all of the terms, covenants, agreements and conditions of the License, so far as applicable.

If Licensee remains in possession of all or any part of the Network Hut Sites at the expiration or termination of this License, or has otherwise failed to remove all of its equipment and facilities, without the prior written consent of City to do so, such holding over shall be unlawful and Licensee equipment and property shall be subject to removal

within one hundred eighty (180) days, and Licensee shall be obligated to pay City for any costs or expenses incurred in removing such equipment and property. Licensee shall be bound by all of the terms, covenants, agreements and conditions of the License, so far as applicable. Nothing contained herein shall grant Licensee the right to any such holding over after this License has expired or been terminated.

5. **Termination of Agreement or Site Terms.** Licensee may terminate this Agreement or the Site Terms for a specific Network Hut Site at any time with thirty (30) days written notice to the City. City may terminate this Agreement in the event of a material breach of this Agreement by Licensee and Licensee fails to cure the breach within sixty (60) days of receipt of notice from City. City may terminate the Site Terms for a specific Network Hut Site in the event Licensee breaches its obligation to maintain the insurance requirements set forth in Exhibit C to this Agreement and Licensee fails to cure the breach within thirty (30) days of notice from Licensee of non-renewal, cancellation or any change in coverage materially adverse to the City. City may also terminate the Site Terms for a Network Hut Site by providing a minimum of one hundred eighty (180) days written notice to Licensee if the City determines that the applicable Network Hut Site is needed for a reasonable and necessary public purpose or poses a safety or health hazard to the community, or Licensee does not use the Network Hut Site for the purposes set forth in this Agreement for one hundred eighty (180) days. Following such written notice of a public purpose need, City agrees to use its best efforts to find an alternative City owned site that Licensee may use as a replacement. Upon any termination or expiration of this Agreement, in whole or in relation to a particular Network Hut Site, Licensee will vacate premises and return Site to its original condition in which it was provided to Licensee.

6. **Fees and Costs.** Licensee agrees to pay to City the annual fee of $3.00 per square foot for each Network Hut Site. The fees shall be paid on an annual basis for each Network Hut Site. Annual fees will be paid prorated for any portion of a year that a Network Hut Site is subject to an executed Exhibit B. The annual fees shall be subject to an annual escalation factor of three percent (3%). Licensee shall be responsible for all its costs associated with construction, operation and maintenance of the Network Hut and Network Hut Site. Payments shall be delivered by Licensee within forty-five (45) days of the payment due date agreed upon by the parties. All other fees, charges, taxes, or monies required to be paid to City arising from the Agreement shall be payable as they become due, or as otherwise required by this Agreement. Any fee installments unpaid by the due date will bear interest at the rate of one and a half percent (1.5%) per month.

Licensee shall pay real property taxes assessed and levied on the Network Hut Site within 45 days of written notice by City. If the Network Hut Site comprises only a portion of the assessed City Property due to use by other private persons, Licensee shall pay a pro-rated portion of the taxes billed owing to its use of the Network Hut Site. As used herein, the term "real property taxes" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed or assessed by any city, county, state, or federal government or any special district or agency, and those taxes remain the responsibility of Licensee.

Licensee shall pay all costs associated with its utility consumption, or utility expenses associated with its use of the Network Hut Site. At its own expense, Licensee shall arrange for separate meters for any utility services required for its use of the Network Hut Sites.

7. **Indemnification.** Licensee shall indemnify, defend and hold harmless the City, its officers, agents, boards and employees, from any liability for third-party claims, damages, costs or expenses, including but not limited to reasonable attorneys' fees, arising from any personal injury or property damage arising out of or by reason of (1) any act or omission related to entry, access, use or occupancy of the Network Hut Sites by Licensee, its agents or its employees or (2) any neglect or omission of Licensee to keep the Network Hut Sites in compliance with this Agreement. Licensee's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct by the City or its officers, agents, boards or employees or any other third party. The City shall notify Licensee in writing as soon as reasonably practicable after receiving written notice of any third-party action or other claim against it, and Licensee shall be relieved of its indemnification obligations to the extent compromised by the City's failure to provide timely notice of any such action or claim. The notice shall describe the claim, the amount thereof (if known and quantifiable) and the basis thereof. Licensee shall have the sole and absolute right, upon written notice to the City, to defend the claim with counsel of its own choosing. Licensee will have the right to control the defense of any such claim, subject to City's process for approval of settlements of claims. Licensee shall consult and cooperate with the City while conducting its defense of the City, and the City shall fully cooperate with Licensee. If, in City's reasonable judgment, a conflict exists between the interests of City and Licensee in such a claim, City may retain its own counsel whose reasonable fees will be paid by Licensee.

8. **Limitation of Liability.** With the exception of the indemnification provisions set out herein, neither party will be liable for any indirect, special, incidental, consequential, exemplary or punitive damages in connection with this agreement, including, but not limited to, damages in the nature of loss of revenues or profits, loss of use of facilities or equipment, or lost sales because of delay or interruption in construction or operation of network hut facilities. The parties acknowledge that this limitation shall be subject to and may be limited by applicable state law.

9. **Insurance**. Licensee will carry and maintain Commercial General Liability, Workers' Compensation and other customary types of insurance in full force and effect, at its own cost and expense, continuously during this Agreement in accordance with the insurance coverage described in Exhibit C attached to this Agreement.

Waiver of Subrogation. City and Licensee each agree to waive claims arising in any manner arising in favor of either City or Licensee and against the other for loss or damage to their property located within or constituting a part or all of the City Property on which the Network Hut Sites are located to the extent that parties' loss or damage is covered by Commercial General Liability insurance or Workers' Compensation

Insurance. The waiver also applies to Licensee's directors, officers, employees, shareholders and agents and to City's officers, agents, boards and employees. The waiver does not apply to claims arising from the willful misconduct or gross negligence of City or Licensee.

10. **Notice**. All notices related to this Agreement will be in writing and sent to the address set forth in each signature block to this Agreement or to such other address as the receiving party specifies in writing. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

11. **Liens.** Licensee shall use commercially reasonable efforts to keep the Network Hut Site free from all liens, including mechanics liens, arising from any act or omission of Licensee or those claiming under Licensee. If a lien is filed as a result of nonpayment, Licensee shall within forty-five (45) days after notice of filing of the lien, provide City with an executed copy of a discharge of the lien, unless Licensee is contesting the lien in good faith, in which case Licensee will take timely action to do so at Licensee's sole expense. If Licensee contests the lien, Licensee will file a bond or deposit and demand the lien claimant release the lien as provided by law. Licensee will reimburse City for any actual and documented costs incurred by City in connection with such lien. If Licensee fails to pay any claims, to discharge any liens, or to file a bond or deposit and contest such liens in good faith within forty-five (45) days of notice of the lien, City may pay any claim or remove any lien and collect all costs of discharge, including its reasonable attorney fees from Licensee.

12. **General Provisions.** This Agreement is governed by the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state. Any litigation between the parties arising under or regarding this License or any Network Hut Site shall occur, if in the state courts, in the Washington County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement may not be assigned by Licensee without the consent of City except for assignments to Licensee's affiliates or in connection with a merger, acquisition, the sale of the entirety of Licensee's fiber optic network in the City or similar transactions. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. If any portion of this Agreement is ruled invalid, void or illegal by an order of the court, the remainder of the Agreement shall remain in full force and effect. The parties agree City and Licensee may conduct any written transactions under this License, including any amendments or waivers, by electronic

means including the use of electronic signatures.

LICENSEE:_____ **CITY OF Tigard, OREGON _**

(Authorized Signature) **Marty L. Wine, City Manager**

(Name)

(Title)

Address: 1600 Amphitheatre Parkway **Address: City of Tigard**
13125 SW Hall Blvd.
Tigard, OR 97223

Mountain View, CA 94043

Date: **Date:** **Date:**

EXHIBIT A

NETWORK HUT SPECIFICATIONS

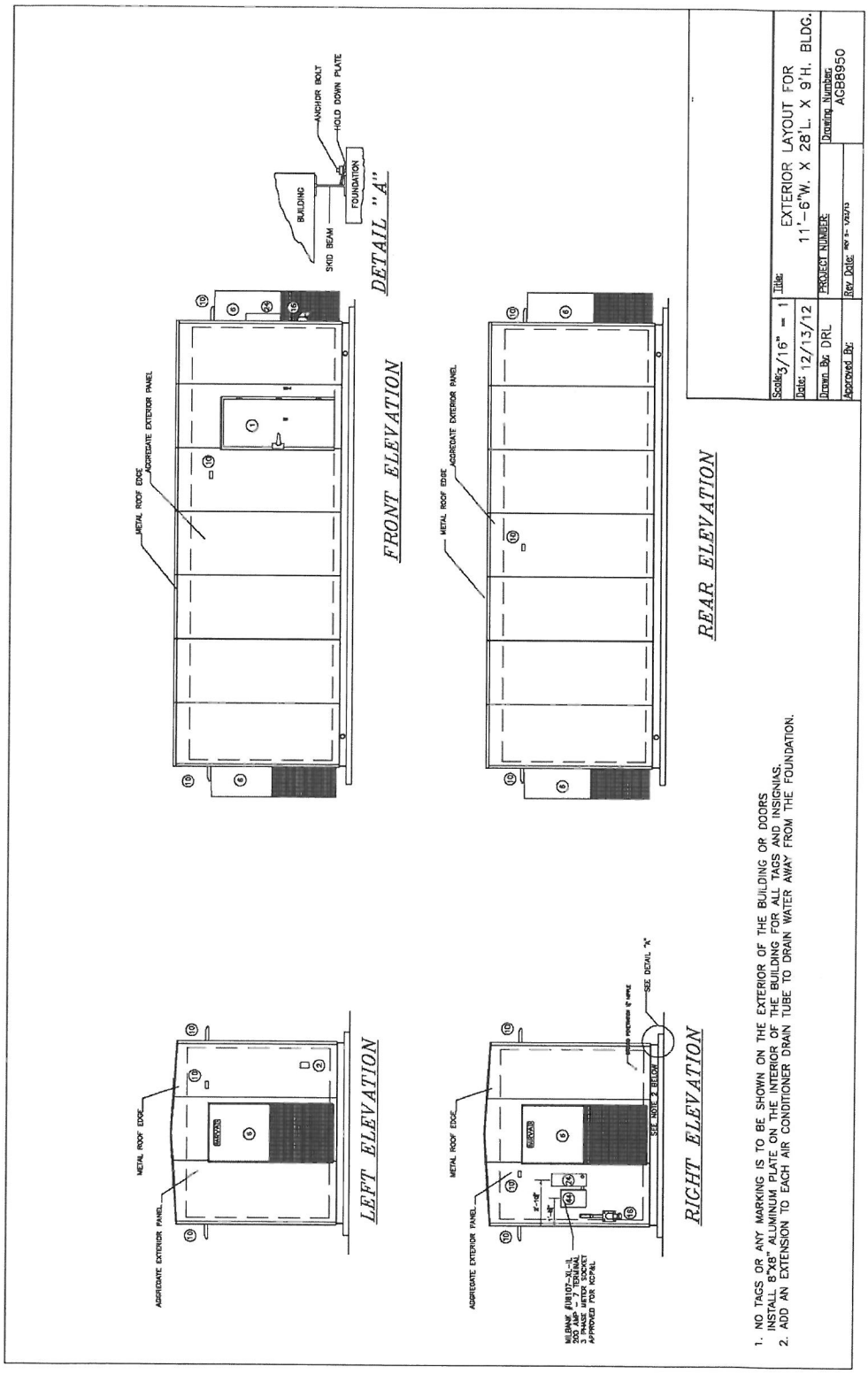

EXHIBIT B

NETWORK HUT SITE TERMS

1. Legal Description of Network Hut Site Location (describe below or attach legal description).

2. Annual Fees:

3. Other terms or requirements applicable to Network Hut Site.
[Drafting Note: Parties may discuss addition of site specific provisions, including but not limited to:

- Common areas;
- Compatibility and representations;
- Easements;
- Site specific requirements for design conditions and maintenance;
- Security; and
- Radio frequency and communications equipment requirements.]

LICENSEE:_____	**CITY:_TIGARD**_____
(Authorized Signature)	**(Authorized Signature)**
(Name)	**Marty L. Wine**
	(Name)
(Title)	**City Manager(Title)**
Address: 1600 Amphitheatre Parkway	**Address:** 13125 SW Hall Blvd.
Mountain View, CA 94043	
Date:	**Date:** **Date:**

EXHIBIT C
INSURANCE REQUIREMENTS

Insurance Coverage

General. A. Licensee shall maintain in full force and effect, at its own cost and expense, continuously during this License, insurance and other forms of financial guarantees in accordance with applicable City Code and implementing regulations. Insurance requirements set forth below do not in any way limit the amount or scope of liability of Licensee under this License. The amounts listed indicate only the minimum amounts of insurance coverage the City will accept to help insure full performance of all terms and conditions of this Agreement. Licensee shall maintain insurance in accordance with the following insurance coverage:

1. Commercial General Liability Insurance providing coverage in the amount of two million dollars ($2,000,000) per occurrence and two million dollars ($2,000,000) in aggregate for property damage and bodily injury. Such insurance shall cover Licensee's construction, operation and maintenance of the Network Hut Sites.
2. Automobile Liability Insurance in the amount of one million dollars ($1,000,000) combined single limit for bodily injury and property damage coverage.
3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.
4. Employers' Liability Insurance in the following amounts:
a. Bodily Injury by Accident: one hundred thousand dollars ($100,000); and
b. Bodily Injury by Disease: one hundred thousand dollars ($100,000) employee limit; five hundred thousand dollars ($500,000) policy limit.
5. The limits of the insurance described herein shall be subject to any changes as to the maximum limits imposed on municipalities of the State of Oregon during the term of this License.

B. The City, its officers, agents, boards and employees shall be designated as an additional insured under each of the insurance policies required herein by endorsement on the policies, except Workers' Compensation, Employer's Liability Insurance and Automobile Liability Insurance. The insurance shall be without prejudice to coverage otherwise existing.

C. Licensee shall not cancel any required insurance policy, nor shall Licensee allow the required insurance to lapse, without obtaining alternative insurance in conformance with this License. For any of the insurance policies identifying the City as an additional insured, as provided herein, Licensee shall notify the City within thirty (30) days of any notice of non-renewal, cancellation or any change in coverage materially adverse to the City. Notices will be provided in accordance with the applicable policies. If the insurance is canceled or materially altered so as to be out of compliance with the requirements set forth herein during the term of this License, Licensee shall provide a replacement policy.

D. Unless Licensee opts to follow self-insurance procedures described herein, each of the required insurance policies shall be with insurers authorized or permitted to do business in the State of Oregon, with an A-: VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition, or an equivalent rating entity.

E. Licensee shall provide the City, within fifteen (15) days of Exhibit B being executed pursuant to this License, a certificate of insurance certifying the coverage required.

F. In the alternative to providing a certificate of insurance to the City certifying liability insurance coverage as set forth herein, Licensee may provide the City with an annual statement regarding its self-insurance. Licensee's self-insurance shall provide at least the same amount and scope of coverage for Licensee and the City, its officers, agents, boards and employees, as otherwise required under this License. The adequacy of such self-insurance shall be subject to review and approval of the City's legal counsel.