

TERMINATION OF THE KAISER EXCLUSION AGREEMENT

THIS TERMINATION of the Kaiser Exclusion Agreement, as amended, is made this 15th day of August, 1995, between **KAISER FOUNDATION HEALTH PLAN, INC.**, ("Kaiser") and the **CITY OF PLEASANTON**, a municipal corporation ("Pleasanton").

RECITALS

WHEREAS, on April 21, 1987, Kaiser and Pleasanton entered into an agreement entitled "Kaiser Exclusion Agreement" ("the Agreement"); and

WHEREAS, the Agreement was amended on April 20, 1993; and

WHEREAS, the Agreement, as amended:

- a) identifies a 19.47 acre "Project Site" which Kaiser owns, on a portion of which Kaiser intended to construct non-profit health care facilities; and
- b) provides that with respect to a non-specific 7.27 acres of the Project Site, such acreage shall not be included within certain districts within the North Pleasanton Improvement District ("NPID") or if included in such districts, that said 7.27 acres of the Project Site shall receive a Zero Dollar assessment; and
- c) provides that Kaiser plans to construct on its property, including the 7.27 acres, a comprehensive array of nonprofit health care facilities ("Facilities"); and
- d) provides that the Facilities shall include an inpatient acute care hospital and may, in addition, include emergency facilities, out patient facilities, medical office facilities, and health promotion and educational facilities; and
- e) provides that by April 21, 2000, Kaiser shall commence construction of the inpatient acute care hospital on the area excluded from assessments; and
- f) provides that if construction of the hospital as set forth above has not been commenced within the time provided therein, then Kaiser is to pay a pro rata amount of the excluded assessment as provided elsewhere in the Agreement; and

WHEREAS, Kaiser has decided not to construct the inpatient acute care hospital within the 7.27 acres; and

WHEREAS, Kaiser has requested that the Agreement be terminated; and

WHEREAS, termination of the Agreement will cause Kaiser to pay the assessments (and interest thereon) on the 7.27 acres of the Project Site; and

WHEREAS, Kaiser is prepared to pay such assessments.

NOW, THEREFORE, the parties agree as follows:

1. The Kaiser Exclusion Agreement, as amended, is hereby terminated.
2. Kaiser shall pay to Pleasanton by August 31, 1995, its pro rata amount of the assessments on the 7.27 acres of the Project Site for which it has been excluded for payment; the total amount of such assessments, including interest, if paid by August 31, 1995 is \$722,463.72.

KAISER FOUNDATION HEALTH PLAN, INC.

CITY OF PLEASANTON

By:

Candido Buzman
ASSISTANT CONTROLLER

By:

Deborah A. Acosta
Deborah A. Acosta
City Manager

ATTEST:

Peggy L. Ezidro
Peggy L. Ezidro, City Clerk

APPROVED AS TO FORM:

Michael H. Roush
Michael H. Roush
City Attorney

(Kaisterm.agt)

FIRST AMENDMENT TO THE KAISER EXCLUSION AGREEMENT

THIS FIRST AMENDMENT (to the Kaiser Exclusion Agreement) is made this 20th day of April, 1993, between **KAISER FOUNDATION HEALTH PLAN, INC.**, ("Kaiser") and the **CITY OF PLEASANTON**, a municipal corporation ("Pleasanton") and amends the Kaiser Exclusion Agreement dated April 21, 1987 between the parties.

RECITALS

WHEREAS, on April 21, 1987, Kaiser and Pleasanton entered into an agreement entitled "Kaiser Exclusion Agreement" ("the Agreement"); and

WHEREAS, the Agreement:

- a) identifies a 19.47 acre "Project Site" which Kaiser owns, on a portion of which Kaiser intends to construct non-profit health care facilities; and
- b) provides that with respect to a non-specific 7.27 acres of the Project Site, such acreage shall not be included within certain districts within the North Pleasanton Improvement District ("NPID") or if included in such districts, that said 7.27 acres of the Project Site shall receive a Zero Dollar assessment; and
- c) provides that Kaiser plans to construct on its property, including the 7.27 acres, a comprehensive array of nonprofit health care facilities ("Facilities"); and
- d) provides that the Facilities shall include an inpatient acute care hospital and may, in addition, include emergency facilities, out patient facilities, medical office facilities, and health promotion and educational facilities; and
- e) provides that within six (6) years from April 21, 1987, Kaiser shall commence construction of a 7.27 acre project on the area excluded from assessments consisting of the Facilities as set forth above; and
- f) provides that if construction of any of the 7.27 acres of Facilities has not been commenced within the time provided therein, then Kaiser is to pay a pro rata amount of the excluded assessment as provided elsewhere in the Agreement; and

WHEREAS, Kaiser has not commenced construction of an inpatient acute care hospital within the 7.27 acre Project Site, but has commenced (and completed) construction of medical office facilities on said site; and

WHEREAS, there is ambiguity whether Kaiser had to commence construction of the hospital by April 21, 1993 in order to continue to have its property excluded from certain NPID assessments; and

WHEREAS, it is Kaiser's intent to commence construction of an inpatient acute care hospital on the 7.27 acre project site by April 21, 2000; and

WHEREAS, the City continues to believe and finds that the nature of a local nonprofit hospital provides considerable local benefit and serves a local need, and that the hospital to be constructed would not receive special benefit from the proposed NPID improvements.

NOW, THEREFORE, the parties agree as follows:

1. Section 1 of the Agreement is amended to read as follows:

"1. Exclusion of a Portion of the Project Site From Assessment Districts. Except as provided for herein, either (i) that 7.27 acres of the Project Site shall not be included within NPID No. 3 improvement or other related regional transportation improvement districts, or (ii) if included in such districts, that said 7.27 acres of the Project Site shall receive a Zero Dollar (\$0.00) assessment."

2. Section 2 of the Agreement is amended to read as follows:

"2. Construction on Project Site.

[Subsection (a), no change]

(b) The Facilities shall include an inpatient acute care hospital and may, in addition, include emergency facilities, outpatient diagnostic and therapeutic facilities, medical office facilities, and health promotion and education facilities.

[Subsection (c), no change]

(d) By April 21, 2000, Kaiser shall commence construction of an inpatient acute care hospital on the Excluded Area. This date shall be extended by the length of time in excess of one year which it takes for Kaiser, acting with due diligence, to obtain from the City approval for the hospital within the Excluded Area.

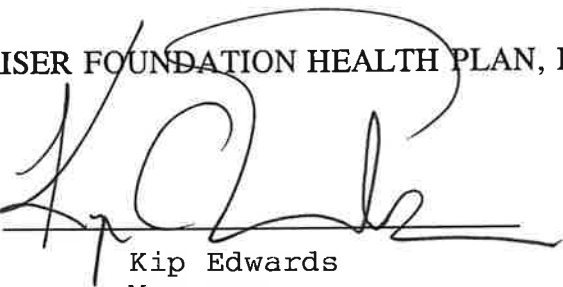
(e) "Commence construction of an inpatient acute care hospital" shall for purposes of this Agreement, as amended, be defined as the date when all governmental agencies which have permitting authority for the hospital's construction have issued the necessary permits for such construction.

(f) If construction of the hospital has not been commenced with the time provided herein, then and in that event, Kaiser shall pay to City a pro rata amount of the excluded assessment based upon the ratio of the excluded acreage upon which construction has commenced to the total acreage of the Excluded Area; provided, however, that Kaiser may request, upon a showing of good cause, a reasonable extension of time to commence construction of the hospital.

[Subsections (g) and (h), no change]."

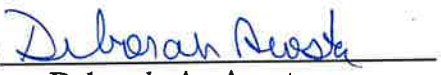
3. In all other respects the terms and conditions of the April 21, 1987 Exclusion Agreement shall continue in full force and effect.

KAISER FOUNDATION HEALTH PLAN, INC.

By: 

Kip Edwards
Manager
Facilities Design &
Construction

CITY OF PLEASANTON

By: 

Deborah A. Acosta
City Manager

ATTEST:



Peggy L. Ezidro, City Clerk

APPROVED AS TO FORM:



Michael H. Roush
City Attorney

FIRST AMENDMENT TO THE KAISER EXCLUSION AGREEMENT

THIS FIRST AMENDMENT (to the Kaiser Exclusion Agreement) is made this 20th day of April, 1993, between **KAISER FOUNDATION HEALTH PLAN, INC.**, ("Kaiser") and the **CITY OF PLEASANTON**, a municipal corporation ("Pleasanton") and amends the Kaiser Exclusion Agreement dated April 21, 1987 between the parties.

RECITALS

WHEREAS, on April 21, 1987, Kaiser and Pleasanton entered into an agreement entitled "Kaiser Exclusion Agreement" ("the Agreement"); and

WHEREAS, the Agreement:

- a) identifies a 19.47 acre "Project Site" which Kaiser owns, on a portion of which Kaiser intends to construct non-profit health care facilities; and
- b) provides that with respect to a non-specific 7.27 acres of the Project Site, such acreage shall not be included within certain districts within the North Pleasanton Improvement District ("NPID") or if included in such districts, that said 7.27 acres of the Project Site shall receive a Zero Dollar assessment; and
- c) provides that Kaiser plans to construct on its property, including the 7.27 acres, a comprehensive array of nonprofit health care facilities ("Facilities"); and
- d) provides that the Facilities shall include an inpatient acute care hospital and may, in addition, include emergency facilities, out patient facilities, medical office facilities, and health promotion and educational facilities; and
- e) provides that within six (6) years from April 21, 1987, Kaiser shall commence construction of a 7.27 acre project on the area excluded from assessments consisting of the Facilities as set forth above; and
- f) provides that if construction of any of the 7.27 acres of Facilities has not been commenced within the time provided therein, then Kaiser is to pay a pro rata amount of the excluded assessment as provided elsewhere in the Agreement; and

WHEREAS, Kaiser has not commenced construction of an inpatient acute care hospital within the 7.27 acre Project Site, but has commenced (and completed) construction of medical office facilities on said site; and

WHEREAS, there is ambiguity whether Kaiser had to commence construction of the hospital by April 21, 1993 in order to continue to have its property excluded from certain NPID assessments; and

WHEREAS, it is Kaiser's intent to commence construction of an inpatient acute care hospital on the 7.27 acre project site by April 21, 2000; and

WHEREAS, the City continues to believe and finds that the nature of a local nonprofit hospital provides considerable local benefit and serves a local need, and that the hospital to be constructed would not receive special benefit from the proposed NPID improvements.

NOW, THEREFORE, the parties agree as follows:

1. Section 1 of the Agreement is amended to read as follows:

"1. Exclusion of a Portion of the Project Site From Assessment Districts. Except as provided for herein, either (i) that 7.27 acres of the Project Site shall not be included within NPID No. 3 improvement or other related regional transportation improvement districts, or (ii) if included in such districts, that said 7.27 acres of the Project Site shall receive a Zero Dollar (\$0.00) assessment."

2. Section 2 of the Agreement is amended to read as follows:

"2. Construction on Project Site.

[Subsection (a), no change]

(b) The Facilities shall include an inpatient acute care hospital and may, in addition, include emergency facilities, outpatient diagnostic and therapeutic facilities, medical office facilities, and health promotion and education facilities.

[Subsection (c), no change]

(d) By April 21, 2000, Kaiser shall commence construction of an inpatient acute care hospital on the Excluded Area. This date shall be extended by the length of time in excess of one year which it takes for Kaiser, acting with due diligence, to obtain from the City approval for the hospital within the Excluded Area.

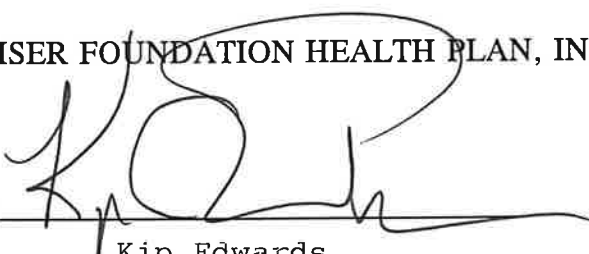
(e) "Commence construction of an inpatient acute care hospital" shall for purposes of this Agreement, as amended, be defined as the date when all governmental agencies which have permitting authority for the hospital's construction have issued the necessary permits for such construction.

(f) If construction of the hospital has not been commenced with the time provided herein, then and in that event, Kaiser shall pay to City a pro rata amount of the excluded assessment based upon the ratio of the excluded acreage upon which construction has commenced to the total acreage of the Excluded Area; provided, however, that Kaiser may request, upon a showing of good cause, a reasonable extension of time to commence construction of the hospital.

[Subsections (g) and (h), no change]."

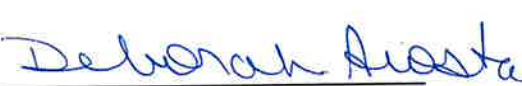
3. In all other respects the terms and conditions of the April 21, 1987 Exclusion Agreement shall continue in full force and effect.

KAISER FOUNDATION HEALTH PLAN, INC.

By: 

Kip Edwards
Manager
Facilities Design &
Construction

CITY OF PLEASANTON

By: 

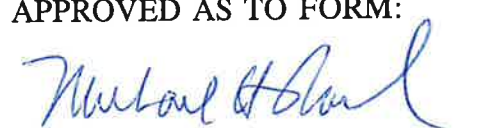
Deborah A. Acosta
City Manager

ATTEST:



Peggy L. Ezidro, City Clerk

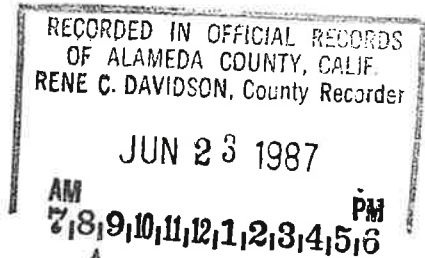
APPROVED AS TO FORM:



Michael H. Roush
City Attorney

RECORDING REQUESTED BY
AND MAIL TO:

City Attorney
P. O. Box 520
Pleasanton CA 94566



KAISER EXCLUSION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of April, 1987, by and between KAISER FOUNDATION HEALTH PLAN, INC., ("Kaiser"), and the CITY OF PLEASANTON, a municipal Corporation (the "City").

R E C I T A L S

A. Kaiser owns an approximately 19.147 acre site ("Project Site") located in the vicinity of the Stoneridge Shopping Center, Pleasanton, California, described in Exhibits A and B, attached to this Agreement and made a part hereof by reference, identified therein as Parcel 1 as designated on Parcel Map 3389, Book 121, Page 86 and Parcel 2 as designated on Parcel Map 3485, Book 125, Page 44 in the Official Records of Alameda County, California, also designated as Assessor's Parcel Number 941-1201-52-1, and designated Parcel No. 20 in the proposed North Pleasanton Improvement District No. 3 (A.D. 1986-9) ("NPID No. 3").

B. Kaiser plans to construct on at least a portion of the Project Site nonprofit health care facilities in which services shall be provided to meet the health care needs of Kaiser subscribers which include many citizens of Pleasanton. These facilities may include, but are not limited to, an inpatient acute care hospital, emergency facilities, outpatient diagnostic and therapeutic facilities, medical office facilities, and health promotion and education facilities.

C. Kaiser and the City have become knowledgeable of the potential costs involved in Kaiser's participation in the proposed NPID improvements and the impact of such costs on Kaiser's dues rates to its subscribers and its attempts to expand its services by constructing the above-described facilities.

D. The City has found that the nature of a local nonprofit hospital, and accompanying facilities as proposed by Kaiser, is essentially local-serving rather than regional, and that the facilities to be constructed would not receive special benefit from the proposed NPID No.3 improvements; accordingly, the City intends to, eliminate a portion of the Project Site from NPID No. 3 and future assessment districts formed to construct regional transportation improvements. The City acknowledges, however, that Kaiser has been included in all previous assessments without exclusion or exemption.

E. The portion of the Project Site to be excluded from assessments ("Excluded Area") is a non-specific area consisting of 7.27 acres. The effect of this agreement is to subject Kaiser's 19.147 acre parcel to the same level of assessment as an 11.877 acre parcel.

F. If Kaiser sells the Excluded Area or a portion of the Excluded Area to a purchaser who does not utilize the excluded area for non-profit medical facilities or does not construct such facilities within the time specified in this agreement, the Excluded Area, like other unimproved lands in the North Pleasanton area, should bear its fair share of the costs of assessment districts formed to provide benefits and improvements to the North Pleasanton area.

NOW, THEREFORE, the parties hereto agree as follows:

1. Exclusion of a Portion of the Project Site From Assessment Districts. Except as provided for herein, the City agrees either (i) that 7.27 acres of the Project Site shall not be included within NPID No. 3 improvements or other related regional transportation improvements, or (ii) if included in such districts, that said 7.27 acres of the Project Site shall receive a Zero Dollar (\$0.00) assessment.

2. Construction on Project Site.

(a) Kaiser plans to construct on all or a portion of the Project Site, including the excluded portion of 7.27 acres ("Excluded Area"), a comprehensive array of nonprofit health care facilities. These health care facilities ("Facilities") shall be those which are consistent with the health care needs of Kaiser subscribers and the citizens of Pleasanton who elect to utilize the non-subscriber Kaiser facilities.

(b) The Facilities shall include, an inpatient acute care hospital and may, in addition, include emergency facilities, outpatient diagnostic and therapeutic facilities, medical office facilities, and health promotion and education facilities.

(c) Any existing improvements on the Project Site as of the date of this Agreement shall not be included as part of the 7.27 acre Excluded Area. The existing improvements are believed to occupy 5.4 acres based upon the City's design review approval for a project previously submitted by Kaiser.

(d) Within six (6) years from the date of this Agreement, Kaiser shall commence construction of a 7.27 acre project on the Excluded Area consisting of the Facilities as set forth above. This six year period shall be extended by the length of time in excess of one year which it takes for Kaiser acting with due diligence to obtain approval for a project within the Excluded Area from the City. For purposes of this subparagraph, the term "City approval" shall include the time

necessary for Kaiser to obtain necessary modifications to its September 29, 1981 Development Agreement with the City.

(e) "Commence construction" shall for purposes of this Agreement be defined as the first work of improvement or delivery of material pursuant to a valid building permit issued by the City of Pleasanton.

(f) If construction of any of the 7.27 acres of Facilities, has not been commenced within the time provided herein, then and in that event, Kaiser shall pay to City a pro rata amount of the excluded assessment based upon the ratio of the excluded acreage upon which construction has commenced to the total acreage of the Excluded Area.

(g) If payment to City of the assessments required to be paid pursuant to subparagraph (f) above is, in the judgment of Kaiser, not economically possible or not economically feasible, then Kaiser may elect to pay to City the amount of the installments excluded to date and the balance of the assessments shall be paid in accordance with a payment schedule mutually agreed upon by the City and Kaiser, said payment schedule to approximate the yearly payment due had the property been included in the assessment district(s). All costs of this procedure shall be paid solely by Kaiser and neither the assessment district nor City shall be at any cost or expense in connection with such proceeding.

(h) In the event Kaiser does not complete the construction on the Excluded Area of the Project Site called for by Section 2, the sole remedy of City is set forth in Sections 2, 3 and 4 and as secured by Section 5.

3. Sale of Excluded Area of Project Site by Kaiser. In the event Kaiser sells all or part of the excluded area of the Project Site, Kaiser agrees to pay to the City at the time of close of escrow an amount equal to the total assessments which would have been levied in NPID No. 3 against that portion of the Excluded Area being sold, plus interest, but for the exclusion granted pursuant to Section 1 of this Agreement. For purposes of a sale of Kaiser property herein, it shall be presumed that any sale of a portion of the Project Site shall first be deemed a sale of non-excluded acreage.

(a) The assessments which would have been levied for the North Pleasanton Improvement District No. 3, formed April 21, 1987, shall be four hundred and twenty-eight thousand, four hundred and forty-eight dollars (\$428,448.00) for the 7.27 acre Excluded Area of the Project Site. Back interest shall be calculated as set forth in subparagraph (c).

(b) For any subsequent assessment districts relating to regional transportation facilities during the term of this agreement, the assessments which would have been levied shall be calculated on a per acre basis multiplied by the acreage of the

Excluded Area of the Project Site, with the per acre amount based on the per acre assessment levied on lands similarly situated, as determined by the Director of Public Works of the City.

(c) Interest for any assessment amount shall be simple interest calculated at the legal rate for the State of California during the time periods of non-assessments, and shall accrue on the full amount due from the date bonds for that assessment district are sold to the date payment is made by Kaiser. In the event bonds in the full amount of the assessments levied are not sold, interest shall accrue only as to that amount of the assessment for which bonds have been sold.

(d) In the event a part of the Excluded Area of the Project Site is sold, the amount due shall be equal to the acreage to be sold multiplied by the per acre assessment levied.

(e) Provided, however, that in the event Kaiser sells all or a part of the Excluded Area to another nonprofit health care entity having a 501(C)(3) exemption the assessment for the Excluded Area shall not be repaid so long as the Facilities constructed on said property are within the description of nonprofit health care facilities and services described in Section 2 and otherwise comply with this Agreement.

4. Use By Kaiser of the Excluded Area for Other Purposes. In the event Kaiser develops all or part of the Excluded Area for purposes other than those described in Section 2 hereof, Kaiser shall pay to the City within thirty (30) days of receipt of City discretionary land use approval for such use an amount equivalent to that described in Section 3 above.

5. Limitations on Successors-in-Interest to the Project Site. Except as provided herein, the obligations of Kaiser created by this Agreement are personal to Kaiser. In the event that the Excluded Area is sold or used by Kaiser for other purposes as described in Sections 3 and 4 hereof then, as security for the promises contained in Sections 3 and 4 hereof only, the City and Kaiser agree that the City shall issue no building permit for any structure on the Excluded Area to Kaiser or any successor-in-interest unless the provisions of Sections 3 and 4 of this Agreement have been met and may bring an action for collection of debt. This Agreement shall be recorded by the City, and this limitation on the use of the Excluded Area of the Project Site shall be binding on successors-in-interest. Promptly upon compliance by Kaiser with Sections 3 and 4 hereof, City shall execute a quitclaim deed to Kaiser and such other documents as may be required to eliminate the cloud on the title to the Excluded Area of the Project Site and eliminate the limitations on the use of the Excluded Area Site as Kaiser may require.

6. Use of Proceeds. City will direct any net proceeds received as a result of this Agreement to offset the cost of improvements included in NPID No. 3.

7. Attorneys' Fees. The prevailing party in any action brought to enforce or construe the terms of this Agreement may recover from the other party its reasonable costs and attorneys' fees expended in connection with such an action.

8. Arbitration. Any controversy between the parties hereto involving this Agreement shall be submitted to Arbitration, and such Arbitration shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure.

9. Scope of Agreement. This writing constitutes the entire agreement between the parties.

10. Recitals. The Recitals hereto are incorporated herein by reference, and by said reference made a part hereof.

11. Term. This Agreement shall expire and be of no further force and effect as of April 21, 2002.

THIS AGREEMENT is executed as of the day and year first above written.

KAISER FOUNDATION HEALTH PLAN,
INC.

By William P. Rose
Its Authorized Agent
William P. Rose
Vice President & Manager
Regional Services

CITY OF PLEASANTON

By KR Mercer
Kenneth R. Mercer, Mayor

ATTEST:

James R. Walker
James R. Walker, City Clerk

APPROVED AS TO FORM:

Peter D. MacDonald
Peter D. MacDonald
City Attorney