DATE: February 2, 2010
TO: The Mayor and City Council
FROM: Sean P. Quinn, City Manager
       Gene S. Cortright, Public Works Director
       George R. Hicks, Assistant Public Works Director
SUBJECT: Resolution of the City Council Approving an Agreement between the City of Fairfield and Kaiser Foundation Hospital for Indemnification and Consent to Disabled Access Improvements within a City Landscaping and Public Services Easement

RECOMMENDED ACTION
Adopt resolution.

STATEMENT OF ISSUE
The City of Fairfield has required Kaiser Foundation Hospital to enter into an Indemnification and Consent Agreement to consent to the construction of certain improvements within an existing city landscaping and public services easement to allow an expansion to the disabled parking area.

DISCUSSION
In 2009, the medical office owned and operated by Kaiser Foundation Hospital, a California nonprofit public benefit corporation ("Kaiser") located at 1550 Gateway Boulevard in Fairfield began construction on improvements to expand their ADA-compliant parking area. That expansion caused Kaiser to encroach into the city's landscaping and public services easement along Gateway Boulevard with a new ADA-compliant concrete walkway owned and maintained by Kaiser. To consent to the permanent encroachment into the city easement and to limit the city's future liability, Kaiser was required to enter into an Indemnification and Consent Agreement to be signed by both parties. Kaiser has executed the agreement and it is now ready for consideration by the City Council.
DATE: February 2, 2010
SUBJECT: Resolution of the City Council Approving an Agreement between the City of Fairfield and Kaiser Foundation Hospital for Indemnification and Consent to Disabled Access Improvements within a City Landscaping and Public Services Easement

FINANCIAL IMPACT
There is no financial impact involved in approving this resolution.

PUBLIC CONTACT/ADVISORY BODY RECOMMENDATION
N/A

ALTERNATIVE ACTION
If Council has any questions, this request can be delayed so staff can provide the necessary backup.

DOCUMENTS ATTACHED
Attachment 1: Proposed Resolution
Attachment 2: Agreement

STAFF CONTACT
Peter Wright, Associate Civil Engineer
707.428.7784
pwright@ci.fairfield.ca.us

Coordinated with: City Attorney
CITY OF FAIRFIELD

RESOLUTION NO. 2010 - 27

RESOLUTION OF THE CITY COUNCIL APPROVING AN AGREEMENT BETWEEN THE CITY OF FAIRFIELD AND KAISER FOUNDATION HOSPITAL FOR INDEMNIFICATION AND CONSENT TO DISABLED ACCESS IMPROVEMENTS WITHIN A CITY LANDSCAPING AND PUBLIC SERVICES EASEMENT

WHEREAS, Kaiser owns certain real property located at 1550 Gateway Boulevard, Fairfield, California in which a portion is encumbered by a landscaping and public services easement for the maintenance of certain existing improvements, including a public sidewalk; and

WHEREAS, Kaiser wishes to construct certain improvements on the property for the purpose of improving disabled access from ADA-compliant parking stalls along an accessible path of travel to their building; and

WHEREAS, Kaiser has requested the City's consent to construct the new improvements within the easement area, which the City has agreed to provide in exchange for Kaiser's indemnification of the City.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:

Section 1. The Mayor is hereby authorized to execute the indemnification and consent agreement with Kaiser Foundation Hospital, a California nonprofit public benefit corporation.

PASSED AND ADOPTED this 2nd day of February 2010, by the following vote:

AYES: COUNCILMEMBERS: ____________________________________________

NOES: COUNCILMEMBERS: __________________________________________

ABSENT: COUNCILMEMBERS: _______________________________________

ABSTAIN: COUNCILMEMBERS: ______________________________________

_____________________________
MAYOR

_____________________________
CITY CLERK
pw
INDEMNIFICATION AND CONSENT AGREEMENT

THIS INDEMNIFICATION AND CONSENT AGREEMENT ("Agreement") is made and entered into as of December 18, 2009 by and between the CITY OF FAIRFIELD, a municipal corporation, with its principal place of business at 1000 Webster, Fairfield, California 94533 (the "City") and Kaiser Foundation Hospital, a California nonprofit public benefit corporation, with its principal place of business at 1950 Franklin Street, Oakland, California 94612 ("Kaiser").

RECITALS

WHEREAS, Kaiser owns certain real property located at 1550 Gateway Boulevard, Fairfield, CA (the "Property"), and a portion of the Property is encumbered by a Landscaping and Public Services easement for the maintenance of certain existing improvements, including a public sidewalk.

WHEREAS, Kaiser wishes to construct certain improvements on the Property for the purpose of improving disabled access from the Property to ADA-compliant parking stalls and to an accessible path of travel from those spaces to the existing building on the Property (as shown more particularly on plans prepared by BKF Engineers dated January 20, 2009 the "New Improvements").

WHEREAS, Kaiser has requested the City's consent to construct the New Improvements within the easement area, which the City has agreed to provide in exchange for Kaiser's indemnification of the City, all as provided more particularly below.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

AGREEMENT

1. Recitals. The Recitals above are declared to be true and correct and are hereby incorporated in this Agreement as if fully set forth below.

2. City Consent. City consents to the construction of the New Improvements by Kaiser at Kaiser's own expense.

3. Indemnification. Kaiser shall defend, hold harmless and indemnify City, its officials, officers, employees and agents (collectively, "Indemnitees"), from any claim, demand, damages, liability, loss, cost or expense (collectively, "claims"), arising out of, pertaining to, or relating to Kaiser's installation, maintenance or use of the New Improvements, including but not limited to any claims challenging the compliance of the New Improvements with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or any other federal, state or local law relating to access for persons

11245.0001.Indemnification K - Kaiser.doc
with disabilities. Kaiser shall defend Indemnites in any action or actions filed in connection with any such claims with counsel of City’s choice, and shall pay all costs and expenses, including actual attorney’s fees, incurred in connection with such defense.

4. **Governing Law.** This Agreement shall be interpreted, enforced and governed by the laws of the State of California.

5. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

IN WITNESS WHEREOF, City and Kaiser have executed this Agreement as of the date first written above.

CITY OF FAIRFIELD, a municipal corporation

By ____________________________  
Name: __________________________  
Title: __________________________

KAISER FOUNDATION HOSPITAL,  
a California nonprofit public benefit corporation,

By ____________________________  
Name: Kithleen Wong  
Title: Project Manager