

**EXHIBIT "A"**  
**AMENDMENT NUMBER FOUR**  
**TO THE RESTATED OVERLAND PARK, KANSAS**  
**MUNICIPAL EMPLOYEES PENSION PLAN AND TRUST AGREEMENT**  
**(Restated as of April 1, 1996)**

**INTRODUCTION**

**THIS AMENDMENT NUMBER FOUR TO THE RESTATED OVERLAND PARK, KANSAS MUNICIPAL EMPLOYEES PENSION PLAN AND TRUST AGREEMENT (Restated as of April 1, 1996)** is made and entered into on this \_\_\_ day of \_\_\_\_\_, 2002, by and between the City of Overland Park, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas (hereinafter referred to as the "Employer"), and Robert E. Eisler, Jr., William B. Anderson III, Kathleen Clark, Kristy Stallings, and Roger Peterson (as Trustee of the Trust Agreement originally executed effective as of October 1, 1969, and subsequently restated as of April 24, 1985, August 7, 1989, and April 1, 1996).

**WITNESSETH**

WHEREAS, the Employer did enter into an agreement with the Trustee, dated February 16, 1970, for establishment of the Overland Park, Kansas, Municipal Employees Pension Plan and Trust Agreement (the "Plan") for the benefit of its Employees; and

WHEREAS, said Plan was restated on April 1, 1996, to incorporate all Amendments up to that time into one document; and

WHEREAS, the April 1, 1996, Restated Plan was amended by Amendment Number One on October 12, 1998 (MEP-583,T); and

WHEREAS, the April 1, 1996, Restated Plan was further amended by Amendment Number Two on February 1, 1999 (MEP-583,U); and

WHEREAS, the April 1, 1996, Restated Plan was further amended by Amendment Number Three on November 20, 2000 (MEP-583,V); and

WHEREAS, the Employer wishes to further amend the Plan to modify the definitions of "Compensation" in accordance with the Community Renewal Tax Relief Act of 2000, to reflect a "good faith" interpretation of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), and to incorporate model language issued by the Internal Revenue Service under Section 401(a)(9) of the Internal Revenue Code;

**NOW, THEREFORE**, in accordance with the authority granted in Article X of the Plan, the Plan is hereby further amended as follows:

1. **Article I, Section 1.7**, is amended in its entirety, effective as of January 1, 2000, to read as follows:

**1.7 “Compensation”** means the actual compensation (excluding bonuses, overtime, reimbursement for expenses, fees, and all other forms of unusual or nonrecurring compensation) received by an Employee from the Employer for services rendered, plus any reductions in regular compensation pursuant to **Section 132(f)(4) of the Code, under** the City of Overland Park, Kansas Flexible Compensation Plan, and/or under the City of Overland Park, Kansas Deferred Compensation Plan(s).

For any Plan Year beginning in 1989 or thereafter, Compensation for purposes of this Plan shall be limited in accordance with Section 401(a)(17) of the Code, as adjusted by the Secretary of the Treasury pursuant to applicable cost-of-living changes. Notwithstanding the preceding sentence, the limit on Compensation for an Employee who first became a Participant in the Plan before January 1, 1994, shall not be less than \$200,000 (the limit in effect under the Plan on July 1, 1993).

2. **Article IV, Section 4.6**, is amended in its entirety, effective as of January 1, 2002, to read as follows:

**4.6 Rollover Contributions.** Any Employee, after filing with the Trustee the form prescribed by the Trustee, may contribute cash to the Trust other than as a voluntary contribution if the contribution is a “rollover contribution,” ~~which the Code permits an employee to transfer either directly or indirectly from one qualified retirement plan to another qualified retirement plan.~~ The words “**rollover contribution**” shall mean an amount that the Code permits an Employee to transfer, either directly or indirectly, from any of the following types of plans, but only of assets that have not yet been subjected to taxation under the Code:

a. A qualified retirement plan described in Section 401(a) or 403(a) of the Code;

b. A tax-sheltered annuity plan described in Section 403(b) of the Code;

c. An eligible deferred compensation plan described in Section 457(b) of the Code, but only if such plan is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state; or

d. An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code.

The Trustee shall require an Employee to furnish satisfactory evidence, either before or after the transfer, that any such transfer is in fact a “rollover contribution” which

the Code permits ~~an employee to make to a qualified retirement plan~~. A rollover contribution shall not be treated as an Annual Addition under Article XVII.

The Trustee will invest and adjust for investment earnings and losses the rollover contribution in accordance with Article V.

An Employee, prior to satisfying the Plan's eligibility conditions, may make a rollover contribution to the Trust to the same extent and in the same manner as a Participant. If an Employee makes a rollover contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Trustee shall treat the Employee as a Participant for all purposes of the Plan, except that the Employee shall not be a Participant for Employer contributions and/or voluntary contributions under the Plan until he or she actually becomes a Participant in the Plan. If the Employee terminates employment prior to becoming a Participant, the Trustee will distribute his or her rollover contribution account as if it were a fully vested Employer contribution account.

3. **Article VI, Section 6.10**, is amended in its entirety, effective as of January 1, 2002, to read as follows:

**6.10 Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under Article VI, a distributee may elect, at the time and in the manner prescribed by the Trustee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover, but only if that eligible retirement plan agrees to accept such eligible rollover distribution. For this purpose, the following definitions shall apply:

a. **"Eligible rollover distribution"**: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution ~~described in Section 401(k)(2)(B)(i)(IV); and or~~ the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Notwithstanding the preceding provisions of this Paragraph, a portion of a distribution shall not fail to be an eligible rollover distribution solely because that portion consists of after-tax employee contributions which are not includible in gross income; provided, however, that such portion may be transferred only to an individual retirement account or annuity described in either of Sections 408(a) or (b) of the Code, or to a

qualified defined contribution plan described in either of Sections 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

b. **“Eligible retirement plan”**: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, ~~an annuity~~ a qualified retirement plan described in either of Sections 401(a) or 403(a) of the Code, ~~or a qualified trust described in Section 401(a) of the Code, that accepts the distributee’s eligible rollover distribution~~ a tax-sheltered annuity plan described in Section 403(b) of the Code, or an eligible plan under Section 457(b) of the Code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. ~~However, in the case of an eligible rollover distribution to a surviving spouse, an eligible retirement plan is only an individual retirement account or individual retirement annuity.~~

c. **“Distributee”**: A distributee includes an Employee or former Employee. In addition, an Employee’s or former Employee’s surviving spouse and an Employee’s or former Employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

d. **“Direct rollover”**: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

4. **Article VI** is amended by adding the following new **Section 6.11** to the Plan, effective as of January 1, 2003:

**6.11 Minimum Distribution Requirements.** The provisions of this Section 6.11 shall be effective for purposes of determining required minimum distributions made on or after January 1, 2003. The requirements of this Section 6.11 shall take precedence over any inconsistent provisions of the Plan, specifically including those of Section 6.9. All distributions required under this Section 6.11 shall be determined and made in accordance with the provisions of Section 401(a)(9) of the Code and the regulations promulgated thereunder.

a. **Definitions.**

i. **“Designated Beneficiary”** means the individual who is designated under Section 1.5 and is the designated beneficiary

under Section 401(a)(9) of the Code and Treasury Regulation 1.401(a)(9)-1, Q&A-4.

ii. “**Distribution Calendar Year**” means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant’s Required Beginning Date. For distributions beginning after the Participant’s death, the first Distribution Calendar Year is the calendar year in which distributions are required under paragraph 6.11.b.ii. The required minimum distribution for the Participant’s first Distribution Calendar Year will be made on or before the Participant’s Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant’s Required Beginning Date occurs, will be made on or before December 31 of the Distribution Calendar Year.

iii. “**Life Expectancy**” means the life expectancy as computed by use of the Single Life Table in Treasury Regulation 1.401(a)(9)-9.

iv. “**Participant’s Account Balance**” means the account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (“**Valuation Calendar Year**”), increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of the dates in the Valuation Calendar Year after the Valuation Date and decreased by distributions made in the Valuation Calendar Year after the Valuation Date. The Participant’s Account Balance for the Valuation Calendar Year includes any amounts rolled over or transferred to the Plan either in the Valuation Calendar Year or in the Distribution Calendar Year if distributed or transferred in the Valuation Calendar Year.

v. “**Required Beginning Date**” means the April 1 of the calendar year following the calendar year in which a Participant attains age 70½ or retires, whichever occurs later.

**b. Time and Manner of Distribution.**

i. The Participant’s entire vested interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s Required Beginning Date.

ii. If the Participant dies before distributions begin, the Participant's entire vested interest will be distributed, or begin to be distributed, no later than as follows:

A. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later; provided, however, the surviving spouse may elect to receive the Member's entire vested interest by December 31 of the calendar year containing the fifth anniversary of the Member's death. Such election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under this subparagraph 6.11.b.ii.A, or by September 30 of the calendar year which contains the fifth anniversary of the Member's death.

B. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died; provided, however, the Designated Beneficiary may elect to receive the Member's entire vested interest by December 31 of the calendar year containing the fifth anniversary of the Member's death. Such election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under this subparagraph b.11.b.ii.B, or by September 30 of the calendar year which contains the fifth anniversary of the Member's death.

C. If there is no Designated Beneficiary as of the September 30 of the year following the year of the Participant's death, the Participant's entire vested interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

D. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this paragraph 6.11.b.ii, other than subparagraph 6.11.b.ii.A, shall apply as if the surviving spouse were the Participant.

For purposes of this paragraph 6.11.b.ii and subsection 6.11.d, unless subparagraph 6.11.b.ii.D applies, distributions are considered to begin on the Participant's Required Beginning Date. If subparagraph 6.11.b.ii.D applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subparagraph 6.11.b.ii.A.

iii. Unless the Participant's vested interest is distributed in the form of an annuity purchased from an insurance company or in a single lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions shall be made in accordance with subsections 6.11.c and 6.11.d. If the Participant's vested interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the regulations promulgated thereunder.

**c. Required Minimum Distributions During Participant's Lifetime.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

i. the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

ii. if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

Required minimum distributions will be determined under this subsection 6.11.c beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

**d. Required Minimum Distributions After Participant's Death.**

i. If the Participant dies on or after the date distributions begin, and there is a Designated Beneficiary, the minimum amount

that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

A. The Participant's remaining Life Expectancy is calculated by using the age of the Participant in the year of death, reduced by one for each subsequent year.

B. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

C. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

ii. If the Participant dies on or after the date distributions begin, and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

iii. If the Participant dies before the date distributions begin, and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in paragraph 6.11.d.i.



iv. If the Participant dies before the date distributions begin, and there is no Designated Beneficiary as of the September 30 of the year following the year of the Participant's death, distribution of the Participant's entire vested interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

v. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subparagraph 6.11.b.ii.A, then paragraphs 6.11.d.iii and 6.11.d.iv shall apply as if the surviving spouse were the Participant.

5. **Article VII, Section 7.2**, is amended in its entirety, effective as of January 1, 2002, to read as follows:

**7.2 Forfeitures; Cash-Outs; Timing of Distributions.** Any portion of a Participant's Employer contribution account forfeited as a result of the application of the vesting schedule shown in Section 7.1 shall be applied by the Trustee to reduce future Employer contributions due hereunder. If the value of the Participant's vested benefit is less than \$5,000 (determined without including any benefit attributable to rollover contributions), it shall automatically be distributed in a lump-sum cash payment as soon after termination of employment as is administratively feasible. Otherwise, the Participant's vested benefit shall remain in the Trust until the earliest of the following:

a. The Required Beginning Date specified in ~~Section~~ paragraph 6.9 6.11.a.v; or

b. The date the Participant elects to receive such vested benefit, which shall be either at the time of termination of employment or subsequently upon giving the Trustee written notice as to the intent to withdraw such benefit. Any election by an Inactive Participant to withdraw his or her vested benefit shall be for the full value of his or her vested Employer contribution account, Participant's contribution account, and rollover account. Partial withdrawals shall not be allowed; or

c. The Participant's death.

Payment of benefits shall be made in accordance with Sections 6.1 through 6.3, as soon as administratively feasible after the applicable event listed above.

6. **Article XVII, Section 17.1**, is amended in its entirety, effective as of January 1, 2002, to read as follows:

**17.1 Annual Limit.** Notwithstanding anything contained herein to the contrary, the total “Annual Additions” made to all accounts of a Participant shall not exceed the lesser of \$30,000\$40,000 or 25—100% of the Participant’s “Compensation,” except that such \$30,000\$40,000 amount shall be increased as may be permitted by regulations issued pursuant to Code Section 415(d) by Internal Revenue Service regulations to reflect changes in the cost of living—cost-of-living adjustments.

7. **Article XVII, subsection 17.2.a.**, is amended in its entirety, effective as of January 1, 2000, to read as follows:

a. **“Compensation”** shall include those items listed in Section 1.415-2(d)(2) of the Treasury Regulations and shall exclude those items listed in Section 1.415-2(d)(3) of such Regulations, subject to the provisions set forth in Section 1.415-2(d)(1) of such Regulations; provided, however, that for Years beginning after December 31, 1997, eCompensation shall include any elective deferral (as defined in Section 402(g)(3) of the Code) and any amount which is contributed or deferred by the Employer at an Employee’s election and which is not includible in the Employee’s gross income pursuant to Sections 125, 132(f)(4), or 457 of the Code.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number Four on the day and year first above written.

**ATTEST**

**CITY OF OVERLAND PARK, KANSAS**

\_\_\_\_\_  
Marian Cook, City Clerk

\_\_\_\_\_  
Ed Eilert, Mayor

**TRUSTEE**

\_\_\_\_\_  
Robert E. Eisler, Jr.

\_\_\_\_\_  
William B. Anderson III

\_\_\_\_\_  
Kathleen Clark

\_\_\_\_\_  
Kristy Stallings

