

# PENDING APPROVAL

## OKLAHOMA COUNTY BOARD OF COUNTY COMMISSIONERS

### AGENDA ITEM REQUEST SHEET

FOR THE June 9, 2010 AGENDA

DEPARTMENT: County Clerk

REQUESTED BY: Jon Wilkerson

REQUISITION NO.: \_\_\_\_\_ N/A \_\_\_\_\_ REQUISITION SHEET ATTACHED: \_\_\_\_\_ YES \_\_\_\_\_ X \_\_\_\_\_ N/A

NAME OF FUNDS: \_\_\_\_\_

FUND NUMBERS: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

DOES THE AGENDA ITEM CONTAIN PRIVACY-PROTECTED OR SECURITY INFORMATION? \_\_\_\_\_ YES \_\_\_\_\_ X \_\_\_\_\_ NO

AGENDA ITEMS CONTAINING PRIVACY-PROTECTED OR SECURITY INFORMATION WILL NOT BE HYPERLINKED TO THE AGENDA.

NUMBER OF ORIGINAL DOCUMENTS TO BE RETURNED TO YOUR DEPARTMENT: \_\_\_\_\_ Three \_\_\_\_\_

AGENDA ITEM READS AS FOLLOWS: \_\_\_\_\_

Discussion and possible action to receive the Service Agreement between Oklahoma County and InvesTrust, N.A. effective July 1, 2010 and ending June 30, 2011. This item was approved by the Retirement Board on May 24, 2010. This item is requested by Carolynn Caudill, County Clerk, and Secretary to the Board and has been approved as to form and legality by John Jacobsen, Assistant District Attorney.

APPROVED BY DA  
(If Applicable)

APPROVED BY ENGINEER  
(If Applicable)

APPROVED BY PURCHASING  
(If Applicable)

\_\_\_\_\_  
ASSISTANT DISTRICT ATTORNEY

\_\_\_\_\_  
COUNTY ENGINEER

\_\_\_\_\_  
PURCHASING AGENT

**Please initial that document has been reviewed for privacy-protected or security information**

DISTRICT ATTORNEY: \_\_\_\_\_ YES \_\_\_\_\_ N/A

COUNTY CLERK: \_\_\_\_\_ YES \_\_\_\_\_ N/A

Indicate any privacy-protected information that exists \_\_\_\_\_

**(NOTE: THE CHAIRMAN/CHIEF DEPUTY MUST APPROVE ALL EMERGENCY REQUESTS FOR ANY ITEM SUBMITTED AFTER THE DEADLINE)**

DATE OF REQUEST: \_\_\_\_\_ APPROVED BY: \_\_\_\_\_

CHAIRMAN

# PENDING APPROVAL

## INVESTRUST, N.A. SERVICE AGREEMENT

Plan Name: The County of Oklahoma County Retirement System

Plan Sponsor: Oklahoma County, Oklahoma (the "Employer" or "County")

Mailing Address: 320 Robert S. Kerr Avenue, Suite 105  
Oklahoma City, OK 73102

This document sets forth the agreement of InvesTrust, N.A. and the above referenced plan and sponsor concerning the services to be provided with respect to the plan.

Effective July 1, 2010 and ending June 30, 2011, InvesTrust, N.A., or its agents, provides the following administrative services to the Oklahoma County Retirement System Plan (the "Plan").

1. **Services to be Provided by InvesTrust.** During the term of this Agreement, InvesTrust shall provide the following services:

### 1.1 PLAN ADMINISTRATIVE SERVICES:

- Allocation of 401(a) contributions within one business day upon receipt of data and verification of balanced payroll information.
- Application of the rules for determining eligibility for participation in or benefits under the Plan.
- Maintenance of individual Participant benefit records segregated by pre-tax and after-tax.
- Preparation of quarterly Participant statements.
- Update of fund values daily.
- Provide administration forms as required to properly operate the Plan.
- Monthly orientation and education of Participants as to their benefits and options under the plan, provided that such discussion and instruction shall not include the rendering of any legal advice or opinions in regards to either the Employer's obligation or Participant's rights under the Plan.
- Verify annual addition limits for the Plan upon proper data received from the Employer.
- Preparation of Internal Revenue Service Forms 1099-R.
- Keep Plan Documents and Summary Plan Description up-to-date for current legislation, IRS rules and regulations.
- Amendments to Plan Documents (adding/terminating, etc.).
- Quarterly notice of interest rate in effect under the Stable Value Fund.
- Data gathering and consulting with respect to audits by governmental agencies or other auditors.

## 1.2 LOAN SERVICES:

- ❑ Loan applications available by internet, regular mail, e-mail, fax, or picked up at InvesTrust, N.A.
- ❑ Accept loan applications directly from Plan Participants.
- ❑ Determine eligibility of requested loan amount, interest rate and length of loan as specified in Loan Policy. Verify vesting with County.
- ❑ Inform Oklahoma County payroll division of new loan payment deductions.
- ❑ Provide Promissory Note and Truth in Lending Agreement to Participant.
- ❑ Mail, direct deposit, or pick up proceeds from loan.
- ❑ Notify Oklahoma County payroll division of any loan payment deduction changes.
- ❑ Process loans within 3 to 5 working days after receipt of vesting verification from benefit department.
- ❑ Assist Participants by phone or internet for loan inquiries.
- ❑ Maintain individual loan records and documents.

## 1.3 OTHER SERVICES:

- ❑ Calculation of distributions resulting from termination of service, retirement, disability, death, hardship, “domestic relations orders” in accordance with plan document. This will include the preparation and mailing of distribution checks. In addition, tax withholding will be a part of this distribution process.
- ❑ Process distributions and send proceeds to benefit departments for retirees’ medical and/or life insurance premiums.
- ❑ Calculation and payment of minimum required distributions.
- ❑ Processing of rollover contributions from the plan.
- ❑ Execution of Participant directed trades and future investment allocation directions.
- ❑ Provide telephone and an internet based service for investment changes, accessing account balances, and/or reviewing transactions to confirm Participant investment trades or allocation changes, etc.

Any services not selected at the time the Agreement is signed can only be changed by written request from the client and acceptance of such change, in writing, by InvesTrust.

## 2. InvesTrust Privacy Disclosure Policy.....see Exhibit A

## 3. BONDING/AUDIT:

As required by regulation 12 CFR 9.4 of the Office of the Comptroller of the Currency, InvesTrust maintains adequate bonding for each Trust officer and administrator. In addition, InvesTrust is required to maintain regulatory capital which is monitored by the board of directors.

InvesTrust as a national bank is required to have a “Reg 9” and financial audit annually. Currently KPMG and American Fidelity Companies the parent of InvesTrust complete these audits and submit their finding to the board of directors directly. In addition the Office of the Comptroller of the Currency does an annual examination of InvesTrust.

**4. INVESTMENT SELECTION:**

InvesTrust is a fiduciary as it pertains to the information and advice it provides to the Trustees relating to the investment alternatives offered to the Participants. InvesTrust will provide information and advice to the Trustee in connection with the selection by the Trustee of investment alternatives to be provided to Participants. Provided however, that InvesTrust shall have no authority or obligation to make any such selection, and Trustee alone, as the fiduciary for the Plan, shall have the sole and final authority with respect to the selection of the investment alternatives to be offered. See Investment recommendation list on exhibit B.

**5. RESPONSIBILITIES OF THE EMPLOYER:**

The Employer will furnish on a timely basis employee data such as dates of hire, dates of birth, address, dates of termination of employment, compensation amounts, and Employer contributions to the Plan, in electronic formats specified by InvesTrust. With InvesTrust's consent, Employer may provide data on information forms provided or approved by InvesTrust. Employer agrees to provide InvesTrust with all information necessary to file reports with the Internal Revenue Service not less than 90 days prior to the filing deadline. InvesTrust makes no guarantee of a timely filing if required information is received less than 90 days prior to a filing deadline. InvesTrust reserves the right, as required under any circumstance, to file with the Internal Revenue Service a request of an extension of time. In addition, if the Employer does not furnish, on a timely and accurate basis, all the information necessary for InvesTrust to perform its duties hereunder, InvesTrust will be held harmless and any loss or penalties imposed will be solely the Employer's responsibility.

The Employer shall provide in writing the person(s) who will be responsible for supplying all requested information and will notify InvesTrust in writing of any change in the identity of such persons(s) as soon as a successor or additional person(s) is designated.

InvesTrust shall be entitled to rely upon the accuracy and completeness of all information furnished to it by any person(s) designated by the Employer and shall have no duty to inquire about such information.

It is understood and agreed that InvesTrust will process electronic payrolls for purpose of placing the requested trades for Participants. It is InvesTrust's service standard that payroll processing should be completed the next processing day after receipt of complete and accurate payroll information in a format prescribed by InvesTrust. However, InvesTrust will assume no responsibility for payroll after one (1) business day where payroll information is not complete, accurate, or in the prescribed format or that has been delayed or accumulated in a manner which increases the workload beyond that encountered in a normal flow of information. The Employer and InvesTrust agree that the Participant accounts are not speculative trading accounts and are not suitable for market timing transactions. The Employer agrees with InvesTrust that the standard for timeliness for investing the money withheld from a payroll, providing the necessary payroll information to InvesTrust and for initiating the requested trades and posting results is a standard of reasonableness unless otherwise prescribed by law. However, InvesTrust shall not be responsible for the effects of delays in placing trades where market conditions limit their access.

## 6. ADDITIONAL SERVICES:

InvesTrust and the Employer may agree from time to time that InvesTrust shall perform additional services for the Plan. Charges for additional services shall be on a time and charges basis in accordance as set forth in Exhibit C (InvesTrust to outline these additional services and provide billing rates, i.e., per transaction or hourly rates).

Additional services that may be required with respect to the Plan include, but are not limited to the following:

- Recalculation of any valuation, calculation or report due to receipt of inaccurate and/or incomplete data from the Employer.
- Termination of Plan.

## 7. FEES:

The Employer shall pay InvesTrust, as compensation for its Services hereunder in accordance with Exhibit "C" hereto. InvesTrust will invoice for services beginning July 1, 2010. Invoices shall be sent to the Employer once monthly. All invoices shall be paid within thirty (30) days of receipt. InvesTrust's fees and administration of accounts will be in compliance with Oklahoma State Statute 19 O.S. § 952.2. See schedule attached as Exhibit "C".

## 8. TERM AND TERMINATION:

All services to be rendered by InvesTrust shall be completed by June 30, 2011, unless extended in writing by the parties. The term of this Agreement shall be for an initial term, up through and including June 30, 2011. InvesTrust may terminate this Agreement upon 180 days written notice delivered to the other party. InvesTrust will be entitled to compensation for services competently performed up to date of termination. The non payment of an invoice does not constitute notice of termination and all fees for services performed through the date of termination are due and payable to InvesTrust. The obligation of the Employer to pay fees and disbursements for services performed through the date of termination, and the rights and obligations of the parties under sections will survive such termination.

Upon the termination of this Agreement and payment of any outstanding fees, InvesTrust will provide the Employer with copies of ending balances for the last valuation period if so requested in writing by the Employer at any time within 30 days of the date of termination of this Agreement. Forms, procedures, software, spreadsheet software, word processing software and the files used by those software, worksheets, checklists and other processes developed by InvesTrust to perform the services required under this Agreement ("InvesTrust's Proprietary Materials") are the property of InvesTrust and not considered the property of either the Plan or the Employer and the Employer and the Plan disclaim any and all ownership interest in InvesTrust's Proprietary Materials. The files of information which relates solely to the Employer or the Plan, which are referred to as "Plan Information," are the sole property of the Employer and the Plan and InvesTrust disclaims any and

all ownership interest in Plan Information. A termination fee will not exceed \$7,500 (plus agreed upon reimbursable expense) for work performed at the request of the Employer.

This Agreement shall commence on July 1, 2010, and by operation of section 26 of Article 10 of the Oklahoma Constitution, shall terminate at the end of the fiscal year on June 30, 2011. Employer shall have the right to renew this Agreement for five successive annual renewal periods at the fee schedule set forth in Exhibit C, unless otherwise agreed upon in writing by the parties hereto; each annual renewal period shall expire on the last day of the then current fiscal year of Employer. It is the present intent of the Employer to continue this Agreement for an additional five fiscal years. However, in order for the Agreement to be continued the Agreement must be renewed on July 1 or thereafter of each succeeding fiscal year by an affirmative action of the Board of County Commissioners of Oklahoma County. Pursuant to section 430.1 of Title 62 of the Oklahoma Statutes, in no event shall the Employer's obligation be deemed to continue past the end of the Employer's fiscal year ending June 30 of every year, nor shall Employer be deemed to be indebted the indebtedness created by each fiscal year's obligation.

It is agreed between the parties that the Employer may terminate this Agreement for any reason at any time before the end of the fiscal year after giving the InvestTrust a thirty-day written notice, and may terminate immediately if InvestTrust breaches any of the terms of this Agreement.

## **9. OTHER PROVISIONS:**

InvesTrust will act in all matters only upon the express direction of the Oklahoma County Retirement Board of Trustees and will at no time exercise any discretion or independent authority with respect to the performance of the administrative services described in this Agreement, since no such independent authority or discretionary rights have been granted to InvesTrust by the Employer, plan administrator, plan administrative committee, or the trustee(s) of any Trust established with respect to the Plan.

InvesTrust, in performing its duties under this Agreement, is not designated nor responsible as an administrator or fiduciary with respect to the Plan for purposes of any federal or state law, and the common law of the State of Oklahoma. It is understood and agreed that the Employer is designated as the administrator and fiduciary of the Plan within the context of any other federal or state law. All administrative and compliance requirements imposed by any federal or state law unless otherwise provided herein will be the sole responsibility of the Employer. InvesTrust agrees to provide such information available to it in its duties hereunder as the Employer might require to satisfy its responsibilities.

It is understood and agreed that InvesTrust is not acting as an enrolled actuary or engaged in the practice of law or certified public accounting and that any information provided by InvesTrust for the performance of any work completed by InvesTrust does not entail a legal, certified public accounting or enrolled actuarial opinion.

The Employer and InvesTrust anticipate those services of third party consultants, legal counsel, actuarial services and certified public accounting services may be necessary. Although InvesTrust

may recommend such third parties, InvesTrust makes no warranty or representation as to the work performed by such third parties.

InvesTrust agrees to regard and preserve as confidential all records and other information relative to the Employer and Plan and will not, without written authority from the Employer, disclose to others during the terms of this Agreement or thereafter any such records or information except as required by applicable law provided, however, that the restriction contained herein shall not apply to:

- 1) Information provided to Plan Participants, beneficiaries and others in connection with the performance of services hereunder
- 2) Information which has been disclosed to third persons through no fault of InvesTrust

InvesTrust agrees that during the term of this Agreement, all records maintained for the Plan shall be open to inspection and audit by the Employer or Employers agent at reasonable times, and that such records shall be preserved and retained by InvesTrust for the greater of three years after the filing date or such other period as may be required by applicable governing regulations as in effect from time to time.

This Agreement and the attached Exhibits constitute the entire agreement between the parties with respect to the administration of the Plan, and the terms of the Agreement itself shall prevail over any conflicts in the provisions of the Exhibits. This Agreement may be amended and any provision hereof waived, but only in writing signed by the party against whom such amendment or waiver is sought to be enforced. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach.

Any notice under this Agreement shall be given in writing by certified mail, return receipt requested, to the address listed below.

The parties hereto represent that this Agreement has been entered into without any undue influence, fraud, coercion, or misrepresentation and acknowledges that the parties have had an opportunity to consult independent counsel of the parties own choosing prior to signing this Agreement.

The parties warrant that they are free to enter into and fully perform this Agreement.

## **10. INDEMNIFICATION:**

InvesTrust agrees to indemnify the Employer from any claims, damages and costs arising out of claims by third parties for property damage and bodily injury, including, but not limited to, death, caused solely by the negligence or willful misconduct of InvesTrust which is not caused in whole or in part by the Employer, its employees or agents.

## **11. CODES, LAWS, AND REGULATIONS:**

InvesTrust will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

## **12. PERMITS, LICENSES, AND FEES:**

InvesTrust will obtain and pay for all permits and licenses required by law that are associated with the InvesTrust's performance of the scope of services under this Agreement.

## **13. ACCESS TO RECORDS:**

InvesTrust will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoice amounts. Said records will be available for examination by the Employer during InvesTrust's normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

## **14. CONTINGENT FEES PROHIBITED:**

InvesTrust warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the InvesTrust, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company corporation, individual or firm, other than a bona fide employee working solely for InvesTrust, McAfee & Taft a Professional Corporation as counsel for InvesTrust, or current counsel any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the Employer shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission percentage, gift or consideration paid in breach of the Agreement.

## **15. INDEPENDENT CONTRACTOR:**

InvesTrust is an independent contractor and as such will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid to its employees or agents under this Agreement.

## **16. ASSIGNMENT:**

Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

## **17. NO THIRD PARTY BENEFICIARIES:**

This Agreement gives no rights or benefits to anyone other than InvesTrust and the Employer. Without limiting the foregoing nothing contained herein is not intended to, nor shall anything

contained herein confer, any right or benefit upon or permit enforcement of any provision by any person other than the parties to this Agreement.

## **18. JURISDICTION:**

The laws of the State of Oklahoma shall govern the validity of the Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Oklahoma County, Oklahoma.

## **19. CONTACT PERSON:**

The Primary contact person under this Agreement for the InvesTrust shall be Jeri Dawson. The primary contact person under this Agreement for the Employer shall be, the Human Resources/Benefits Director.

## **20. APPROVAL OF PROFESSIONALS:**

The Employer reserves the right to approve the contact person and the persons actually performing the professional services on behalf of InvesTrust pursuant to this Agreement. If Employer, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the professional services on behalf of InvesTrust pursuant to this Agreement, Employer may require InvesTrust assign a different person or persons be designated to be the contact person or to perform the professional services hereunder. Employer hereby agrees to the engagement by InvesTrust of Oklahoma Data Services, an affiliate of InvesTrust, to provide certain services hereunder (at no additional cost to employer).

## **21. ADDITIONS TO CONTRACT:**

All costs not covered by the Scope of Services as described on Exhibit C and original RFP effective July 31, 2002 shall be agreed upon by the parties.

## **22. ESCROW FUND:**

InvesTrust shall establish an escrow account (the "Escrow Account"), to which Employer agrees to deposit an amount sufficient to pay to the Trust, for the benefit of the Participants in the Plan on a daily basis the amount of expenses and costs (other than the purchase price) incurred by the Trust in connection with the purchase of investments by the Trust, which is the "expense ratio" charged with respect to the purchase of investments by the Trust such amount is referred to as the "Expense Reimbursement". InvesTrust shall prepare an estimate of the amount of the Expense Reimbursement for each calendar month at the beginning of each month and on such interim dates as InvesTrust deems appropriate. Employer will deposit to the Escrow Account the amount necessary to fund the Expense Reimbursement for the month upon receipt of the estimate from InvesTrust. InvesTrust shall provide the Employer with a quarterly reconciliation of the deposits to and disbursements from the Escrow Account. InvesTrust agrees to cause the Expense Reimbursement for each day on which investments are purchased by the Trust to be transferred to the Trust within one business day of the purchase to which it relates and to maintain appropriate

records and reports to the Trust concerning the same. The Expense Reimbursement when made to the Escrow Account shall at all times be deemed to be the property of the Employer, and the Employer hereby directs that InvesTrust make the Expense Reimbursement to the Trust as provided in this Section 22 and the Plan.

### **23. CONTINUITY OF SERVICES:**

InvesTrust recognizes that the services under this contract are vital to Oklahoma County and must be continued without interruption and that, upon contract expiration, a successor, either the county or another contractor, may continue them. InvesTrust agrees to (1) furnish all information as requested by the County and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to successor.

# PENDING APPROVAL

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature

## Oklahoma County Board of County Commissioners

\_\_\_\_\_, 2010

By: \_\_\_\_\_  
Chairman

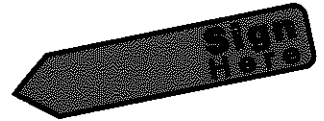
\_\_\_\_\_, 2010

By: \_\_\_\_\_  
Vice-Chairman

\_\_\_\_\_, 2010

By: \_\_\_\_\_  
Member

Attest: \_\_\_\_\_  
Secretary



## The Oklahoma County Retirement Board of Trustees

\_\_\_\_\_, 2010

By: Raymond R. Vaughn  
Chairman

\_\_\_\_\_, 2010

By: Ernest "Butt" Fruman  
Vice-Chairman

Attest: Carolyn Gaudell  
InvesTrust, N.A.

4-22, 2010

Attest: Brandi Martiny

Debbie Swaid  
Notary Public  
Sworn before me this 2nd day of April 2010.  
# 02001534  
EXP. 05/10/14  
DEBBIE SWAID  
NOTARY PUBLIC  
STATE OF OKLAHOMA

Approved as to legality by the District Attorney's Office, Oklahoma County, Oklahoma City, Oklahoma.

April 29, 2010

By: \_\_\_\_\_  
Assistant District Attorney

## Exhibit "A"

### **InvesTrust Client Information Privacy Disclosure Policy**

The Office of the Comptroller of the Currency and other banking regulators have approved final privacy rules under Title V of the Gramm-Leach-Bliley Act. This Act requires financial institutions to provide annual notice to all clients regarding their privacy policies and practices. InvesTrust is pleased to provide you with our Privacy Policy, and hope you will review this important information.

At InvesTrust, our mission is to exceed the needs of our clients. As financial services professionals entrusted with sensitive financial information, we respect the privacy of our clients and are committed to treating client information responsibly. Our Client Information Privacy Disclosure Policy serves as a standard for all InvesTrust employees for the collection, use, retention and security of individual client information.

InvesTrust collects, retains, and uses client information for specific business purposes. We use client information to protect and administer your records, accounts, and funds; to comply with certain laws and regulations; to help us design or improve our products and services; and to understand your financial needs so that we can provide you with quality products and superior service.

InvesTrust does not reveal specific information about client accounts or other personally identifiable data to unaffiliated third parties or companies for their independent use unless: 1) there is a client request or authorization; 2) the information is provided to help complete a transaction initiated by client; or 3) the disclosure otherwise is lawfully permitted or required. We do not provide client information to unaffiliated third parties or companies for the purpose of independent telemarketing or direct mail marketing of any products or services of those companies.

At InvesTrust, we value our client relationships. We want you to understand how we use your information and our commitment to ensuring personal privacy. If you have any questions regarding InvesTrust's Client Information Privacy Disclosure Policy please contact us.

## Exhibit "B"

Recommended Fund Offerings as of July 1, 2010

### Fund Distribution Strategies

Fixed Income

Large Cap Value

Large Cap Growth

Mid Cap Blend

Small Cap Value

Small Cap Growth

International/Foreign

Target Retirement Funds

**Exhibit "C"**

**InvesTrust, N.A.**

**Annual Fee Schedule**

**The County of Oklahoma County Retirement System**

**38 Basis Points of first \$70,000,000 of Plan assets  
30 Basis Points on balance of Plan assets  
Billed Monthly at the end of Each Month  
Plus  
Lump Sum Distribution @ \$25.00 each  
QDRO Distribution @ \$75.00 each  
No fee will be charged for residual distributions.**

**Participant Costs:**

**Loan Application Fees @ \$75.00 each**

The total cost of this contract through June 30, 2011 shall not exceed \$350, 000.00