

**RailPros Field Services, Inc.****SERVICES AGREEMENT**

This Services Agreement (“Agreement”) is entered into by and between RailPros Field Services, Inc. (“RailPros”) and the entity or individual (“Customer”) described in the Scope of Work/Customer Information Request attached hereto as “Exhibit A” (the “SOW”). The SOW is expressly incorporated herein by reference for all purposes. The SOW also provides RailPros’ charges for services requested. This Agreement shall become effective upon the earlier of the Customer’s executing this agreement or RailPros’ reasonably undertaking to perform services requested by the Customer (the “Effective Date”).

WHEREAS, Customer desires to retain RailPros to provide certain services described and set forth in further detail in the SOW (the “Services”); and

WHEREAS, RailPros has the capability and capacity to provide the Services and—subject to the terms and conditions set forth herein—is willing to perform such Services; and

In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RailPros and Customer (hereinafter, collectively, the “Parties,” or each, individually, a “Party”) agree as follows:

1. RailPros shall provide Services to the Customer: (1) in accordance with the terms of this Agreement; (2) within any parameters set forth in the SOW; and (3) to the reasonable satisfaction of the Customer. In turn, the Customer shall pay RailPros for its services at the applicable daily rate(s) set forth in the SOW.
2. RailPros shall periodically provide Customer with invoices that set forth the value of the Services provided to Customer during a defined period of time (collectively, the “Invoices”; individually, an “Invoice”). Payments will be in accordance with VTCA Chapter 2251.021, Time for Payment by a Government Entity. Customer shall remit payment to RailPros at 1320 Greenway Dr., Suite 490, Irving, Dallas County, TX 75038. In the event Customer fails to timely remit payment to RailPros as required in this Section 2, RailPros may elect to immediately cease providing Services to Customer—without providing any advance notice to Customer— until Customer remits payment for all amounts owed by Customer for Services. Customer expressly agrees and acknowledges that it shall neither assert nor seek to enforce any claim for damages or penalties arising from RailPros’ ceasing performance under this Section 2. RailPros’ right to cease providing Services based on nonpayment and/or untimely payment is independent of any right(s) set forth in Section 5 of this Agreement.
3. In the event that Customer contests any charge(s) included on an Invoice and/or asserts that any Services described in an Invoice were deficient, Customer shall submit a written complaint to RailPros (a “Complaint”) within fifteen (15) business days of its receipt of the challenged Invoice. A Complaint must set forth (in detail): (1) the Services and/or Invoice entries that Customer is contesting; (2) the basis for Customer’s Complaint; and (3) Customer’s desired solution. Failure to timely submit a Complaint shall constitute a waiver of any grievances related to the subject Invoice and shall further be construed as an unequivocal agreement to pay all amounts described therein.



4. Customer may terminate this Contract, in whole or in part, at any time without cause, and without liability except for required payment for services rendered by providing at least twenty-four (24) hours written notice to RailPros. Failure to provide timely notice under this provision shall obligate Customer to pay RailPros for one (1) additional days' worth of Services at the applicable daily rate(s) set forth in the SOW.
5. RailPros may terminate this Agreement without liability, effective upon providing notice to Customer, if Customer: (1) materially breaches a provision of this Contract and fails to cure its breach within fifteen (15) days after receipt of written notice of its breach, or (2) becomes insolvent or admits and/or demonstrates its inability or unwillingness to pay its debts as they become due.
6. This Agreement shall commence as of the Effective Date and shall continue thereafter until the Services described in the SOW are completed or the Contract is terminated.
7. This Agreement benefits solely the Parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. The Company shall not assign, sell, transfer, or convey this agreement, in whole or in part, without the prior written consent from Collin County.
8. This Agreement may not be altered, amended, modified or otherwise changed, except by a writing duly executed by the Parties hereto.
9. This Agreement constitutes the final and entire agreement between the Parties, and this Agreement supersedes all prior understandings and agreements, if any, among or between the Parties.
10. The failure of any Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way affect the validity of this Contract or any part thereof or the right of any person thereafter to enforce each and every provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other breach.
11. This Agreement shall be interpreted and construed under the laws of the State of Texas, and venue for all suits arising out of or relating to this Contract shall be brought exclusively in a Texas state district or county court sitting in Collin County, Texas.
12. All invoices, requests, communications, and notices required to be sent to Customer shall be delivered to the address(es) and/or email address(es) set forth in the SOW. All Complaints, requests, communications, and notices required to be sent to RailPros shall be sent to RailPros at 1320 Greenway Dr., Suite 490, Irving, Dallas County, TX 75038, Attention: Stuart Hall. Any notice of termination and/or cancelation shall be sent to RailPros at [Stuart.Hall@RailPros.com](mailto:Stuart.Hall@RailPros.com).
13. Neither of the Parties shall be liable for any delays or failures in performance due to acts of God, strikes, lockouts, labor restrictions by governmental authority, civil riots, war and acts of terrorism.
14. In the event of any subsequent litigation involving the interpretation or enforcement of this Contract, the prevailing Party shall recover against the non-prevailing Party all of its costs and reasonable attorneys' fees incurred in connection with the lawsuit.
15. In connection with RailPros' providing the Services, RailPros agrees to obtain the following insurance policies: (1) a Commercial General Liability policy with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate (the "CGL Policy") and (2) a Commercial Automobile Liability policy with limits of not less than \$1,000,000 (collectively, the "Policies").



The Policies shall include Customer as additional insureds (collectively, the "Additional Insureds"). Coverage for the Additional Insureds shall be primary and non-contributory to any other insurance maintained by Customer. Coverage for Additional Insureds under the CGL Policy shall be set forth via an ISO endorsement form CG 20 26 07 04 (or equivalent endorsement), unless otherwise limited by applicable law. The Policies shall include a Waiver of Subrogation in favor of Customer. RailPros agrees to provide Customer with Certificate(s) of Insurance that verify the foregoing.

In addition, RailPros agrees to maintain Workers' Compensation insurance (the "WC Policy") with limits established by statute in the state where the Services will be provided. All RailPros employees providing Services shall be covered under the WC Policy, including employees who are sole proprietors, members or partners, whether or not required by applicable law. The WC Policy shall also include a Waiver of Subrogation in favor of Customer.

16. To the fullest extent allowed by law, RailPros and Customer each agree to indemnify, defend, and hold the other harmless from any third-party claims, costs, liabilities, judgments, expenses, or damages (including reasonable attorneys' fees and other costs of suit) alleged to arise from the indemnifying party's sole negligence in performing their respective obligations under this Agreement.

17. Expenses for Enforcement - In the event either party hereto is required to employ an attorney to enforce the provisions of this agreement or required to commence legal proceedings to enforce the provisions hereof, the prevailing party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement including collection.

18. Force Majeure: No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

19. In the event of a work day cancellation of scheduled services with less than 24 hours' notice, RailPros will consider it a standard 8-hour day. Cancellations must be made in writing to BNSF.Info@RailPros.com.

**RailPros Field Services, Inc**

**Collin County**

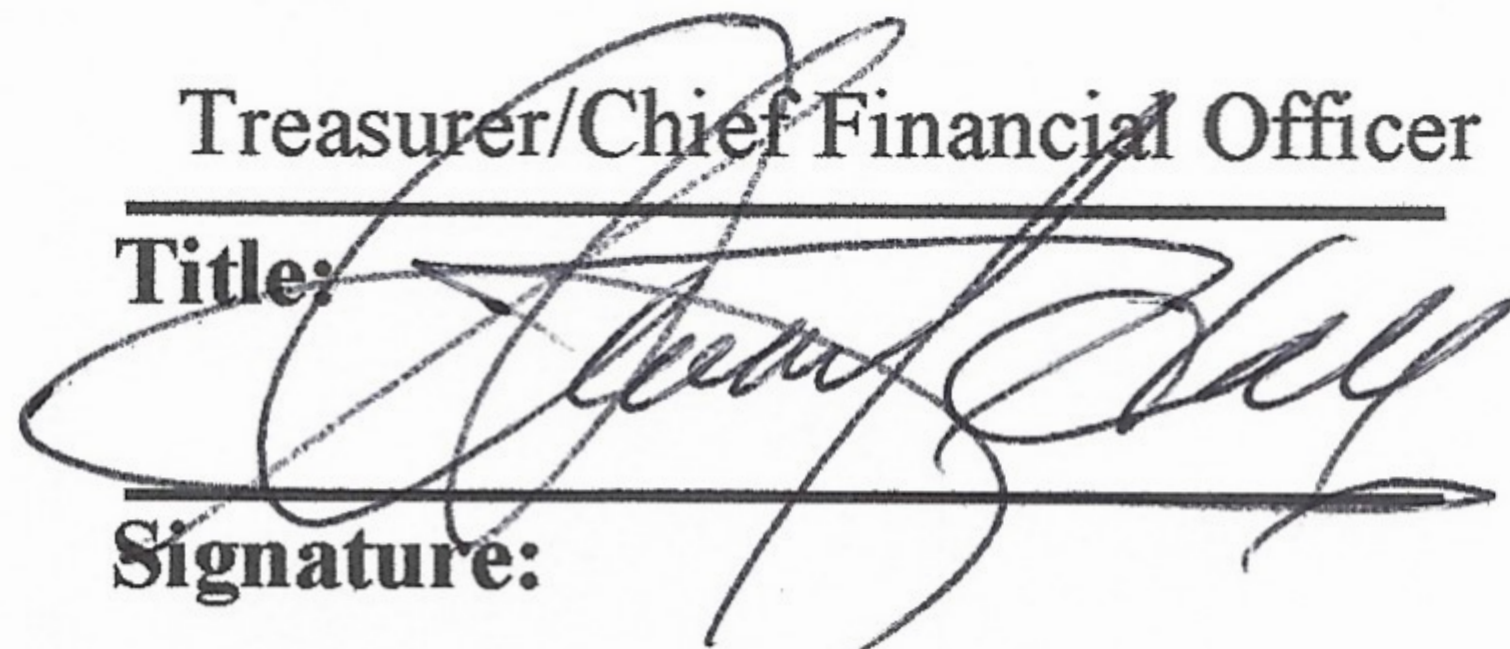
Stuart P. Hall

Name

Treasurer/Chief Financial Officer

Title:

Signature:



Name

Title:

Signature:

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