

- A. **COUNTY** SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS RAILWAY, ITS PARENTS, AFFILIATES, SUBSIDIARIES, AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS AND EMPLOYEES OF EACH ("RAILWAY INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITIES OF EVERY KIND (INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS, AND OTHER EXPENSES RELATED THERETO) FOR INJURY TO OR DEATH OF A PERSON OR FOR LOSS OF OR DAMAGE TO ANY PROPERTY WHATSOEVER (INCLUDING BUT NOT LIMITED TO PROPERTY OWNED BY OR IN THE CARE, CUSTODY, OR CONTROL OF **RAILWAY** INDEMNITEES, **COUNTY** OR ITS DESIGNEES), ARISING OUT OF OR IN CONNECTION WITH ANY WORK DONE, ACTION TAKEN OR PERMITTED BY THE **COUNTY**, ITS CONTRACTORS, AGENTS OR EMPLOYEES UNDER THIS AGREEMENT AND/OR IN ANY WAY ARISING UNDER OR RELATED TO THE **PROJECT** OR THIS AGREEMENT.

IT IS THE EXPRESS INTENTION OF **COUNTY** AND **RAILWAY** THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFIES **RAILWAY** INDEMNITEES FOR THEIR OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS ACTIVE OR PASSIVE, OR IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE; PROVIDED THAT SAID INDEMNITY SHALL NOT PROTECT **RAILWAY** INDEMNITEES FROM LIABILITY FOR DEATH, INJURY OR DAMAGE ARISING SOLELY OUT OF THE CRIMINAL ACTIONS OF RAILWAY INDEMNITEES. IT IS STIPULATED BY THE PARTIES THAT **RAILWAY** INDEMNITEES OWE NO DUTY TO **COUNTY**, ITS CLIENT, OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR INVITEES TO PROVIDE A REASONABLY SAFEWORK PLACE AND THAT ALL PARTIES ENTERING ONTO RAILWAY PROPERTY DO SO AT THEIR SOLE RISK.

- B. **County** shall be responsible for all damages and expenses on account of injuries, (including death) to, and property damage of, any of its employees, agents, subcontractors or representatives while on the property of **Railway** and shall indemnify, defend and hold **Railway** Indemnitees harmless from all claims of damage or suits which may arise, except and only to the extent that such claims, losses, damages or expenses are caused by the gross negligence of **Railway** Indemnitees.
- C. IN NO EVENT SHALL **RAILWAY** INDEMNITEES OR **COUNTY** BE LIABLE TO THE OTHER FOR ANY PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

XI. Cancellation of Project; Termination of Agreement: Remedies

- A. If **County** determines it is necessary to cancel the **Project** for any reason, **County** may terminate this Agreement by delivery of written notice to **Railway**. Upon **Railway's** receipt of such notice, **Railway** shall proceed to stop work.
- B. **County** shall reimburse **Railway** for (i) all reasonable costs and expenses incurred in returning **Railway's** property to its original condition to **Railway's** reasonable satisfaction, and (ii) any of **Railway's** expenses incurred in connection with its provision of flagging and protective services up until the time of termination.