

REVISED SETTLEMENT AGREEMENT

CARB, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture

REVISED SETTLEMENT AGREEMENT

This Revised Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; Tutor Perini Corporation, with its principal location at 1801 Century Park East Suite 500, Los Angeles, California 90067, and O & G Industries, Inc., with its principle location at 112 Wall Street, Torrington, Connecticut 06790, a Joint Venture; and Frontier Kemper Constructors Inc., with its principal location at 15900 Olden Street, Sylmar, California 91342, and Tutor Perini Corporation, with its principal location at 1801 Century Park East Suite 500, Los Angeles, California 90067, a Joint Venture (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC), oxides of nitrogen (NO_x), and diesel particulate matter (PM). (Health & Saf. Code, §§ 39002 et seq., 39650-39675.) In-use off-road diesel fueled vehicles are powered by diesel fueled engines that emit toxic PM.
- (2) Regulation. CARB adopted the *In-Use Off-Road Diesel-Fueled Fleet Regulation* (Off-Road Regulation) to reduce NO_x, diesel PM, and criteria pollutant emissions from in-use off-road diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2449 et seq.)
- (3) Regulatory Provisions. Any person, business, or government agency who owns or operates an off-road vehicle with a diesel-fueled or alternative diesel-fueled off-road compression-ignition engine with a maximum power of 25 horsepower or greater or other specified off-road equipment in California must meet the requirements of the Off-Road Regulation. (Cal. Code Regs., tit.13, § 2449, subd. (a).) These requirements include prohibiting large fleets from adding any vehicle with a Tier 0 engine beginning on January 1, 2014, Tier 1 engine by 2014 and Tier 2 engine by 2018. (Cal. Code Regs., tit.13, § 2449 et seq.) A large fleet is defined as a "fleet with a total max hp greater than 5,000." (Cal. Code Regs., tit.13, § 2449, subd. (c)(24)(A).)
- (4) Penalty Provisions. Failure to comply with the Off-Road Regulation's requirements is a violation of State law that may result in penalties of up to forty thousand, seven hundred twenty-five dollars (\$40,725), adjusted for inflation, per violation for strict liability violations (Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., 42410, and 43016; Cal. Code Regs., tit.13, § 2449.)

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CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, each conducted, and still conduct, business in the State of California, and collectively have a large fleet under the Off-Road Regulation. Each of them are jointly and severally responsible for each of the terms of this Settlement Agreement.
- (6) Ongoing Violations. On or about May 14, 2018, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, violated California Code of Regulations, title 13, section 2449, subdivision (d)(6), by adding 9 pieces of banned equipment to its fleet, identified by the following Equipment Identification Numbers (EIN): MD7E89, YU4P48, BB4V96, BJ6J84, EC7A55, FG3D76, GV5Y59, HF4A65, LN7U59. On or about March 18, 2020, Tutor Perini Corporation, and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, violated California Code of Regulations, title 13, section 2449, subdivision (d)(6) by adding 10 pieces of banned and altered equipment to its fleet, identified by the following EINs: NU3B85, NP9G58, NV7D89, BN3T56, UG5F89, HK4D35, YC5K57, GC9F58, UR3A43, WY3T37.
- (7) Additional Violations. On or about November 20, 2020, Tutor Perini Corporation, and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, informed CARB that they will violate California Code of Regulations, title 13, section 2449, subdivision (d)(6). On or about January 22, 2021, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, confirmed that, to safely complete the Project, described in paragraph 10.a., they will need to violate California Code of Regulations, title 13, section 2449, subdivision (d)(6), by adding five pieces of banned or altered equipment to their fleet, identified by the following EINs: TG3V63, ML4A87, FH5T64, MW8M64, SL5U43.
- (8) CARB alleges that if the allegations described in paragraphs 1 through 7 were proven, civil penalties could be imposed against Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, for each and every off-road or vehicle in violation of CARB regulations, for each day of the violation, according to Paragraph 4, above.
- (9) Acknowledgment. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, each admit to the facts in paragraphs 1 through 7, and agree that they would be subject to penalties as set out in paragraphs 4 and 8 if any of the companies do not comply with this Revised Settlement Agreement.

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- (10) This Revised Settlement Agreement does not affect CARB's ability to take enforcement action against, or to impose penalties on Tutor Perini Corporation, O & G Industries, Inc., and Frontier Kemper Constructors Inc. for any violations other than those set out in paragraphs 6 and 7. Tutor Perini has a prior Settlement Agreement that was fully executed on October 2020 for prior violations of the In-Use Off-Road Regulation. In this case, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, promptly and fully cooperated with CARB, notified CARB in advance, and sought help complying with the Off-Road Regulation. Further, the circumstances of the violations here were unique, as described hereafter:
- a. The equipment would be performing work under the Purple Line Extension Section 2 Project – Design/Build LACMTA Contract No. C71493000C1120, Purple Line Extension Section 3 Tunnels Project – Design/Build LACMTA Contract No. C40403C1151, and Purple Line Extension Section 3 Stations Project - Design/Build LACMTA Contract No. C45161C1152 (collectively, "Project");
 - b. The tunnels and stations of the Project were classified as "gassy" by the California Department of Industrial Relations Division of Occupational Safety and Health (CAL/OSHA), in accordance with California Code of Regulations, title 8, section 8422 (tunnel classifications), Underground Classification Numbers C114-037-16T; Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, submitted evidence that the "gassy" classification makes it unsafe to operate compliant off-road equipment on the Project, making it necessary for Tutor Perini to add approximately 24 pieces of banned and altered equipment to its fleet, in violation of the Off-Road Regulation, to meet the equipment operation requirements in California Code of Regulations, title 8, section 8425, and be able to complete the Project. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, submitted evidence that the equipment needs could not be supplied with unaltered or unbanned Tier 2, 3, or 4 engines, and that failure to institute these modifications would have resulted in a serious safety hazard; and
 - c. The altered and banned engines Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, need to use in their fleet, as described in paragraphs 6 and 7, for this Project were the cleanest Mine Safety and Health Administration (MSHA)-approved engines available or technically feasible for use in the equipment needed for the Project.

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- (11) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Revised Settlement Agreement. In order to resolve the violations described herein, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, have taken, or agree to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Revised Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, or Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, for the violations referred to in paragraphs 6 and 7 of the Case Background section of this Revised Settlement Agreement, and of Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, each completing all terms and conditions set forth below, the Parties agree as follows:

- (1) Settlement Amount. An appropriate penalty amount for these alleged violations is \$23,000. If Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, or Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, fail to comply with any obligations or terms of this Settlement Agreement, as determined by CARB, the penalty amount of \$23,000 for the violations shall become due and payable by Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, jointly and severally, within 30 days of notification by CARB.
- (2) As a condition of this Revised Settlement Agreement, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall each do the following:
- a. Offset and/or mitigate all oxides of nitrogen (NO_x) and particulate matter (PM) emissions associated with use of the equipment with the following EINs, which are equipped with banned Tier 0/1/2 engines or an altered Tier 3 engine: HF4A65, BJ6J84, MD7E89, GV5Y59, NU3B85, NP9G58, NV7D89, BN3T56, UG5F89, HK4D35, BB4V96, FG3D76, LN7U59, YC5K57, GC9F58, YU4P48, EC7A55, UR3A43, WY3T37, TG3V63, ML4A87, FH5T64, MW8M64, SL5U43. CARB will provide Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, an estimate of these emissions within 60 calendar days of executing this Revised Settlement Agreement. Tutor

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Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, must perform the mitigation measures it submitted to CARB, in Attachment 1 to this Revised Settlement Agreement, by June 30, 2021, which will mitigate all excess NO_x emissions CARB calculates. These mitigation measures and their implementation must be surplus to requirements of any federal, State, or local law, rule, or regulation; may not be used to receive credit under any federal, State, or local law, rule, or regulation; and may not violate any federal, State, or local law, rule, or regulation. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall not implement mitigation measures other than those listed in Attachment 1 without advance written CARB approval. Once Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, or Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, receive written CARB approval of any mitigation measure, it must begin implementing it immediately, unless CARB agrees otherwise in writing;

- b. Except as otherwise allowed by this Revised Settlement Agreement, comply with all requirements of the Off-Road Regulation, including for the equipment listed in Table 1, below, including but not limited to: annual reporting, reporting changes to the fleet, and submittal of the Responsible Official Affirmations of Reporting (ROAR) form;
- c. Not add to and/or operate in their fleet any banned equipment other than those listed in Table 1, below;
- d. Not add, operate, or modify any off-road equipment, including in this fleet, other than those pieces of equipment listed in Table 1, below, unless it meets the requirements of the Off-Road Regulation. If any changes to Table 1, below, are necessary, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall notify CARB of any proposed changes to this Revised Settlement Agreement, including adding, removing or changing any of the equipment listed in Table 1, below, in writing no more than 10 calendar days after discovering that any such modification is necessary, and show the need for each such modification, including safety issues if such modification is not instituted and the unavailability of any other equipment to do the work needed; and shall not make any such changes, including bringing or modifying any equipment other than that in Table 1 into the State, including by adding vehicles to the fleet, or operating such equipment without

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CARB's prior written approval and implementing CARB's associated direction;

- e. Make the proper modifications to upgrade the equipment and/or engines used on the Project to cleaner equipment and/or engines, or make modifications to the equipment and/or engines used on the Project that result in cleaner operation of the equipment, as soon as practicable after Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, CARB, or any other relevant agency, including, but not limited to, MSHA or CAL/OSHA, at any time identifies cleaner equipment that can be used for the project identified; and keep CARB informed of available modifications and progress toward making any required modifications, as applicable;
- f. Immediately, upon completion of the Project, or removal of the Project's "gassy" designation of the Project, take the following actions with regard to all equipment in Table 1, below:
 - i. Remove it from operation and move it out of the State of California, or return it to the equipment's original specifications, except that the equipment with the following EINs must immediately be moved out of the State of California after Project completion or removal of the Project's "gassy" designation: HF4A65, BJ6J84, MD7E89, GV5Y59, NU3B85, NP9G58, NV7D89, BN3T56, UG5F89, HK4D35, BB4V96, FG3D76, LN7U59, YC5K57, GC9F58, YU4P48, EC7A55, UR3A43, WY3T37, TG3V63, ML4A87, FH5T64, MW8M64, SL5U43;
 - ii. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, may not receive any credit under the Off-Road Regulation or any other federal, State, or local law, rule, or regulation for the removal, repower, or modification of the equipment in Table 1 from the modified specifications allowed under this Revised Settlement Agreement, and;
 - iii. In lieu of removing the equipment in Table 1 from operation and moving it out of the State of California, or returning it to the equipment's original specifications, upon completion or re-designation as not "gassy" of the Project, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and

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Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, may consider selling some or all of the equipment in Table 1, but only to another entity working on another section of the Purple Line Extension, if it is still classified as "gassy," but shall first notify CARB of their intent to sell in writing and in advance, and shall not proceed with the sale of any Table 1 equipment without CARB's advance written approval and completion of any CARB requirements as to the sale, such as complete reporting, consistent with CARB regulation; and the fleet to which they sell must be in compliance or be brought into compliance before the sale takes place;

- g. Notify CARB within 10 calendar days of a CAL/OSHA designation of Underground Classification Numbers C114-037-16T to a classification other than "gassy;" and
- h. If a designation of Underground Classification Numbers C114-037-16T, in whole or in part, to a classification other than "gassy" occurs prior to completion of the , Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, must follow the requirements in paragraphs 2(f) and 2(g) of the Terms and Conditions of this Revised Settlement Agreement, and compliant, un-modified equipment must be used to complete that portion of the contract, unless evidence is presented to CARB that satisfies CARB that it is not safe to do so.

Table 1: Banned and/or Modified In-Use Off-Road Equipment

Fleet Name	Fleet ID	Equipment Identification Number (EIN)
Tutor Perini O&G JV	135204	HF4A65
Tutor Perini O&G JV	135204	BJ6J84
Tutor Perini O&G JV	135204	MD7E89
Tutor Perini O&G JV	135204	GV5Y59
Tutor Perini O&G JV	135204	NU3B85

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Fleet Name	Fleet ID	Equipment Identification Number (EIN)
Tutor Perini O&G JV	135204	NP9G58
Tutor Perini O&G JV	135204	NV7D89
Tutor Perini O&G JV	135204	HK4D35
Tutor Perini O&G JV	135204	BN3T56
Tutor Perini O&G JV	135204	UG5F89
Tutor Perini O&G JV	135204	BB4V96
Tutor Perini O&G JV	135204	FG3D76
Tutor Perini O&G JV	135204	LN7U59
Tutor Perini O&G JV	135204	YC5K57
Tutor Perini O&G JV	135204	GC9F58
Tutor Perini O&G JV	135204	YU4P48
Tutor Perini O&G JV	135204	EC7A55
Tutor Perini O&G JV	135204	UR3A43
Tutor Perini O&G JV	135204	WY3T37
Tutor Perini O&G JV	135204	TG3V63
Tutor Perini O&G JV	135204	ML4A87
Tutor Perini O&G JV	135204	FH5T64
Tutor Perini O&G JV	135204	MW8M64
Tutor Perini O&G JV	135204	SL5U43

- (12) Agreement Period. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, agree that this Revised Settlement Agreement shall be in effect at all times when at least one of the Parties is working on the Project, the Underground Classification Numbers C114-037-16T is designated as "gassy," and CARB has not been notified of any designation change to one other than "gassy" that no longer requires the use of the equipment in Table 1; and shall remain in effect for 30 days after completion of all Parties' work on the Project, or designation of the

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Underground Classification Numbers C114-037-16T as “non-gassy” and compliance with paragraphs 2(f) and 2(g) of the Terms and Conditions of this Revised Settlement Agreement, whichever is later. This shall be known as the Agreement Period.

- (13) **Suspended Penalties.** If Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, or Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, fail to comply with each and every requirement set out in this Revised Settlement Agreement at all times during the Agreement Period, the Parties agree that Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall become jointly and severally obligated to pay twenty three thousand dollars (\$23,000) to CARB for deposit into the Air Pollution Control Fund for the purpose of carrying out its functions and duties, within thirty (30) calendar days of either the violation or notice by CARB to Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, of the violation, whichever is earlier.
- (14) **Civil Penalty and Mitigation Payment Method.** Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall pay any civil penalty and mitigation due by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, are responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty and mitigation amount into the Air Pollution Control Fund for the purpose of carrying out CARB’s duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, in accordance with paragraph 17 (Notices).
- (15) **Compliance Plan.** Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall continue to comply with the Off-Road Regulation at all times during the Agreement Period, other than as allowed under this Revised Settlement Agreement. If Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, become noncompliant with the Off-Road Regulation, other than as allowed under this Revised Settlement Agreement, at any time during the Agreement Period, they must submit and, if approved by CARB, implement a compliance plan within 30 calendar days of becoming noncompliant to ensure that Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier

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Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, comply with all provisions of the Off-Road Regulation.

- (16) Documents. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall each promptly sign, date, and email the signed and dated Revised Settlement Agreement, and any signed and dated Compliance Plan, if applicable, for CARB approval to the email in paragraph 17 (Notices). If a violation of this Revised Settlement Agreement occurs and payment becomes due under paragraph 13, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall mail a copy of proof of payment of the penalty and a copy of the Payment Transmittal Form to CARB at the address in paragraph 17.
- (17) Notices. Unless otherwise specified in this Revised Settlement Agreement, any notification, submission, or other communication required by this Revised Settlement Agreement shall be submitted in writing to the address or email below, as applicable:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Diesel Programs Enforcement Branch / Specialized Fleet Enforcement
Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture:
mbuck@associatesenvironmental.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Each Party is responsible for ensuring that all Parties have its current notice recipient and notice address. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing, and if mailed, shall become effective within 5 business days after being mailed.

- (18) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall be jointly and severally liable for, and shall pay all costs of

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investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.

- (19) Repeat Violations. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, each agree to comply with all CARB regulatory requirements, and acknowledge that repeat violations of CARB regulations could result in increased penalties in the future.
- (20) Entirety. This Revised Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof; this Revised Settlement Agreement also fully supersedes the Settlement Agreement between the Parties that was fully executed on October 29, 2020. This Revised Settlement Agreement consists of 15 pages and 39 paragraphs, and Attachment A.
- (21) Binding Effect. This Revised Settlement Agreement binds Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, and their principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Revised Settlement Agreement.
- (22) Effective Date. The effective date shall be the date upon which this Revised Settlement Agreement is fully executed.
- (23) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Revised Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Revised Settlement Agreement.
- (24) Severability. Each provision of this Revised Settlement Agreement is severable, and in the event that any provision of this Revised Settlement Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Revised Settlement Agreement remains in full force and effect.
- (25) Joint and Several Liability. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, are jointly and severally liable for all the provisions of this Settlement Agreement, including the required mitigation actions and penalty in paragraphs 2.a, 14, and 16 of the Terms and Conditions of this Revised Settlement Agreement.

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- (26) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (27) Non-Discharge. It is further agreed that the penalties described in this Revised Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (28) Not Tax Deductible. For purposes of this Revised Settlement Agreement, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, shall not deduct any monies spent to comply with any provision of this Revised Settlement Agreement in calculating and submitting its federal, State, or local income tax.
- (29) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Revised Settlement Agreement.
- (30) Non-Waiver. The failure to enforce any provision of this Revised Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Revised Settlement Agreement. The rights and remedies granted all Parties herein are cumulative, and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Revised Settlement Agreement, or otherwise provided by law.
- (31) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Revised Settlement Agreement; understand and accept all terms; enter into this Revised Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Revised Settlement Agreement; have agreed to this Revised Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Revised Settlement Agreement.
- (32) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Revised Settlement Agreement.
- (33) Counterparts and Electronic Signatures. This Revised Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered valid, legally binding signatures.

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- (34) Release. In consideration of the full completion of mitigation and all other undertakings above within the Agreement Period, CARB hereby releases Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, and their principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (35) Authority. The undersigned represents that he or she has full authority to enter into this Revised Settlement Agreement.

PENALTY BASIS

- (36) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty thousand seven hundred twenty-five dollars (\$40,725), plus inflation, per violation per day under Health and Safety Code section 43016 for violations of the Off-Road Regulation. (Cal. Code Regs., tit.13, § 2449 et seq.) The penalty of \$23,000 is for 23 pieces of equipment over an unspecified number of days of violation. Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, which collectively have a large fleet, added banned Tier 0 vehicles to its fleet after January 1, 2014, added banned Tier 1 vehicles to its fleet after January 1, 2014, and added banned Tier 2 vehicles to its fleet after January 1, 2018. The per unit penalty in this case is approximately \$1,000 per violation. The penalty was reduced because the Parties were fully cooperative with the investigation, because they self-reported to and consulted with CARB on how to come back into compliance with the Off-Road Regulation, and because of the unique circumstances.
- (37) Emissions. The provisions cited above do prohibit emissions above a specified level. In most cases, including this case, it is not practicable to quantify these emissions because the information necessary to do so, such as emission rates and time of use, is not available. Excess emissions were estimated in this case for the purposes of mitigation only, based on emission rates and average time of use for similar equipment.

Tutor Perini Corporation and O & G Industries, a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, acknowledge that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed in Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

REVISED SETTLEMENT AGREEMENT

CARB and Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture

- (38) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors and CARB's Enforcement Policy. CARB considered whether the violators came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; the nature and persistence of the violation, including the magnitude of the excess emissions; the violators' compliance histories; preventative efforts taken by the violators, including action taken to mitigate the violations; the innovative nature and magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; financial burden to the violators; and whether the violators voluntarily disclosed the violations. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and in consideration of the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger, depending on the unique circumstances of the case.
- (39) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture, and on confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 6/10/2021

REVISED SETTLEMENT AGREEMENT

CARB and Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and
Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture

Tutor Perini Corporation and O & G Industries, a Joint Venture

Signature: /S/

Name: Daniel Louis

Title: PL2 Project Manager

Date: 5/12/2021

Tutor Perini Corporation and O & G Industries, a Joint Venture

Signature: /S/

Name: William Jensen

Title: PLE-3 Stations Project Manager

Date: 5/25/2021

Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture

Signature: /S/

Name: Steve Redmond

Title: Project Manager

Date: 5/26/2021

REVISED SETTLEMENT AGREEMENT

CARB and Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and
Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture

ATTACHMENT A

REVISED SETTLEMENT AGREEMENT

CARB, Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture

				Tier 1 Emission Factors (g/bhp-hr)		Tier 3 Emission Factors (g/bhp-hr)		Excess Emissions (lbs)	
				horsepower	hours of use	load factor	NOx	PM	NOx
VMS25	165	28,080.0	0.4	6.9	0.60	2.6	0.22	17,553.1	1,551.2
800R/320CL	185	31,574.4	0.38	6.9	0.60	2.6	0.15	21,023.4	2,200.1
973C	230	46,800.0	0.38	6.9	0.40	2.6	0.15	38,740.9	2,252.4
JLG	63	324.0	0.42	6.9	1.09	3.0	0.30	37.8	16.4
Xtreme Forklift	124	270.0	0.4	6.9	0.60	2.6	0.22	126.8	11.2
CAT 325	210	5,000.0	0.38	6.9	0.40	2.6	0.15	3,779.1	219.7
Gradall XL4200	185	480.0	0.38	6.9	0.60	2.6	0.15	319.6	33.4
Xtreme XR1045	120	2,106.0	0.4	6.9	0.60	2.6	0.22	957.4	84.6
							Pounds	55,589.6	3,956.1
							Tons	27.8	2.0

SETTLEMENT AGREEMENT AND RELEASE

CARB and Tutor Perini Corporation and O & G Industries, Inc., a Joint Venture, and Frontier Kemper Constructors Inc. and Tutor Perini Corporation, a Joint Venture

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Mitigation #1: Electrify Compressors										
					Emission Factor NOx	Emission Factor PM	NOx Emissions	NOx Emissions	PM Emissions	PM Emissions
Equipment Type	Number	HP	Hours of Use	Load Factor	(g/bhp-hr)	(g/bhp-hr)	(lbs)	(tons)	(lbs)	(tons)
Portable Air Compressors	9	3000	62,400	0.48	2.6	0.15	514,593.83	257.30	29,688.11	14.84
Note: Although 9 Air Compressors will be on site at PL2 and PL3, only six will typically operate at a time. The other three will be cycled in to support maintenance on one or two compressors at any given time.										
Note: Hours of use is based on six compressors of nine operating at a time. Actual hours may be higher.										
	Mitigation Comparison									
		Required	Proposed	Sufficient?						
	NOx (lbs)	55,589.60	514,593.83	Yes						
	PM (lbs)	3,956.08	29,688.11	Yes						