

**SETTLEMENT AGREEMENT AND RELEASE**

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and Tutor Perini Corporation and O & G Industries, Inc. a Joint Venture (hereinafter "Tutor Perini"), 1801 Century Park East Suite 500, Los Angeles, CA 90067.

**I. RECITALS**

- (1) Health and Safety Code sections 39650-39675 mandate the reduction of the emission of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive 10-year scientific assessment process, CARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use off-road diesel-fueled vehicles (off-road vehicles) are powered by diesel-fueled engines that emit toxic PM. Off-road vehicles are controlled under chapter 9, 13 CCR § 2449.
- (2) California Code of Regulations, title 13, section 2449, subdivision (b) states that, except as provided in § 2449(b)(2)(G), the Regulation for In-Use Off-Road Diesel-Fueled Fleets (In-Use Off-Road Regulation) "applies to any person, business, or government agency who owns or operates within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road."
- (3) California Code of Regulations, title 13, section 2449, subdivision (c)(24) (13 CCR 2449(c)(24)) provides that a medium fleet is a "fleet with a total max hp...greater than 2,500 hp but less than or equal to 5,000 hp."
- (4) Tutor Perini owns and operates a fleet with a total max hp greater than 2,500 hp but less than or equal to 5,000 hp, and is therefore a medium fleet as defined in 13 CCR 2449(c)(24).
- (5) California Code of Regulations, title 13, section 2449, subdivision (d)(6) prohibits medium fleets from adding any vehicle with a Tier 1 engine beginning on January 1, 2012.
- (6) On or about May 14, 2018, Tutor Perini allegedly 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 EINs: MD7E89, YU4P48, BB4V96, BJ6J84, EC7A55, FG3D76, GV5Y59, HF4A65, LN7U59.

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- (7) Tutor Perini's actions, as alleged in recital paragraphs 1-6, would, if proven, be unlawful and in violation of the In-Use Off-Road Regulation, codified at California Code of Regulations, title 13, section 2449 et seq.
- (8) If the facts described in recital paragraphs 1-6 herein above were proven, civil penalties could be imposed against Tutor Perini pursuant to Health and Safety Code section 39674 for each and every banned vehicle involved in said violations.
- (9) Tutor Perini admits the facts in recital paragraphs 1-6.
- (10) Tutor Perini has no prior violations of the In-Use Off-Road Regulation, codified at California Code of Regulations, title 13, section 2449 et seq. Tutor Perini promptly and fully cooperated with CARB throughout its investigation, notified CARB in advance, and sought help complying. Further, the circumstances of the violations were unique, as described hereafter:

- a. The equipment would be performing work under the Purple Line Extension Section 2 Project – Design/Build , LACMTA No. C71493000C1120, to construct Section 2 of the Purple Line Extension Project that will extend the subway to downtown Beverly Hills and Century City. The tunnels and stations 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. The "gassy" classification requires Tutor Perini to add approximately 9 pieces of equipment banned under the In-Use Off-Road Regulation to meet the equipment operation requirements in California Code of Regulations, title 8, section 8425. Equipment could not be supplied with unaltered or unbanned Tier 2, 3 or 4 engines, and failure to institute these modifications would have resulted in a serious safety hazard;

and

- b. The engines added by Tutor Perini were the cleanest Mine Safety and Health Administration (MSHA)-approved engines available or technically feasible that could be used in the types of equipment needed for the project.

**II. TERMS AND RELEASE**

In consideration of CARB not filing a legal action against Tutor Perini for the alleged violations referred to above, of CARB suspending the penalties set forth

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in Section (1) below, and of Tutor Perini complying with the conditions in (2) below, CARB and Tutor Perini agree as follows:

- (1) An appropriate penalty amount for these alleged violations is \$9,000.00. If Tutor Perini fails to comply with any obligations or terms of this Agreement as determined by CARB, the penalty amount of \$9,000 for the violations in recital paragraphs 1-6 shall become due and payable within 30 days<sup>1</sup> of notification by CARB.
- (2) As a condition of this Agreement, Tutor Perini shall do the following:
  - a. Offset and/or mitigate all oxides of nitrogen (NOx) and particulate matter (PM) emissions associated with use of the equipment with the following EINs, which are equipped with banned Tier 1 engines: MD7E89, YU4P48, BB4V96, BJ6J84, EC7A55, FG3D76, GV5Y59, HF4A65, LN7U59. CARB will provide Tutor Perini an estimate of these emissions within 60 calendar days of executing this Agreement. Tutor Perini must perform the mitigation measures it submitted to CARB, in Attachment 1 hereto, which will mitigate all excess NOx emissions CARB calculates, by June 30, 2021. These mitigation measures 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 must receive CARB approval of mitigation measures other than those listed in Attachment 1 prior to implementing any measures other than those in Attachment 1. Once Tutor Perini receives 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 Agreement, comply with all requirements of the In-Use 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 its fleet and/or operate 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

<sup>1</sup> All reference to "days" is to calendar days, not business days, unless otherwise noted. If a deadline falls on a State holiday, or a Saturday or Sunday, the deadline to perform becomes the next business day that is not a State holiday, a Saturday, or a Sunday.

changes to Table 1 are necessary, Tutor Perini shall notify CARB of any proposed necessary actions, including adding, removing or changing any of the equipment in this fleet, listed in Table 1, below, in writing at least 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 bring or modify any equipment other than that in Table 1 into the State, or add to the fleet or operate such equipment without CARB's prior written approval;

- e. Make the proper modifications, as soon as practicable, to upgrade to cleaner equipment or modifications which result in cleaner operation of the equipment if Tutor Perini, 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;
- f. Immediately, upon completion of the Purple Line Extension Section 2 Project, take the following actions with regard to all equipment in Table 1, below: either remove it from operation and move it out of the State of California or return it to the equipment's original specifications, except for the equipment with the following EINs, which are equipped with banned Tier 1 engines, which must immediately be moved out of the State of California: MD7E89, YU4P48, BB4V96, BJ6J84, EC7A55, FG3D76, GV5Y59, HF4A65, LN7U59. Tutor Perini will not receive any credit under the In-Use Off-Road Regulation or any other federal, State, or local law, rule, or regulation for the removal, repower, or modification of these equipment from the modified specifications;
- g. Notify CARB within 10 calendar days of 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 Purple Line Extension Section 2 Project, the equipment in Table 1, below, must immediately be removed from operation for that portion (or reach) of the tunnel and compliant, unmodified equipment must be used to complete that portion of the contract, if it is safe to do so; and Tutor Perini must notify CARB within 10 days. If the entire project is designated to a classification other than "gassy", all equipment in Table 1, below, must immediately be either removed from operation and moved out of the State of California or returned to the equipment's original specifications, if it is safe to do so; and Tutor Perini must notify CARB within 10 days. The equipment with

the following EINs, which are equipped with banned Tier 1 engines, must immediately be moved out of the State of California: MD7E89, YU4P48, BB4V96, BJ6J84, EC7A55, FG3D76, GV5Y59, HF4A65, LN7U59. Tutor Perini will not receive any credit under the In-Use Off-Road Regulation or any other federal, State, or local law, rule, or regulation for the removal, repower, or modification of these equipment from the modified specifications.

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	MD7E89
Tutor Perini O&G JV	135204	YU4P48
Tutor Perini O&G JV	135204	BB4V96
Tutor Perini O&G JV	135204	BJ6J84
Tutor Perini O&G JV	135204	EC7A55
Tutor Perini O&G JV	135204	FG3D76
Tutor Perini O&G JV	135204	GV5Y59
Tutor Perini O&G JV	135204	HF4A65
Tutor Perini O&G JV	135204	LN7U59

- (3) Send the signed Agreement and any future mailings or documents required per the terms of this Agreement to:  
  
Mr. Nelson Van  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812
- (4) If the Attorney General files a civil action to enforce this Agreement, Tutor Perini shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (5) This Agreement does not affect CARB's ability to take enforcement action against, or to impose penalties on, Tutor Perini for any violations other than those in in recital paragraphs 1-6.
- (6) This Agreement shall apply to and be binding upon Tutor Perini and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

- (7) This 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.
- (8) This Agreement constitutes the entire agreement and understanding between CARB and Tutor Perini concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Tutor Perini concerning these claims.
- (9) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties hereto.
- (10) Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
- (11) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
- (12) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (13) Waiver. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.
- (14) The Parties agree that this Agreement may be executed by facsimile and in counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
- (15) **SB1402 Statement.** Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires CARB to provide information on the basis for the penalties it seeks. This information, which is provided throughout this Agreement, is summarized here.

**The manner in which the penalty amount was determined, including a per unit or per vehicle penalty:**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024. The per-unit penalty in this case is a maximum of \$1,000 per unit per strict liability violation. The penalty obtained in this case is approximately \$1,000 per unit for 9 units. The penalty was reduced because Tutor Perini was fully cooperative with the investigation; because Tutor Perini 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.

**The provision of law under which the penalty is being assessed and why that provision is most appropriate for that violation.**

The penalty provision being applied in this case is Health and Safety Code section 39674, because Tutor Perini added banned vehicles to its fleet after January 1, 2012, in violation of California Code of Regulations, title 13, section 2449(d)(6).

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

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.

- (16) Tutor Perini acknowledges 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.
- (17) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. The penalty

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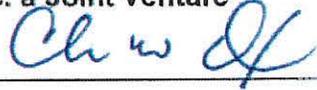
was reduced in this matter based of the factors listed above. Penalties in future cases might be smaller or larger on a per-unit basis.

- (18) The penalty in this case was based in part on confidential business information provided by Tutor Perini that is not retained by CARB in the ordinary course of business. The penalty was also based on confidential settlement communications between CARB and Tutor Perini that CARB does not retain in the ordinary course of business. The penalty is the product of an arms-length negotiation between CARB and Tutor Perini, and reflects CARB's assessment of the unique circumstances, the desire to obtain swift compliance with the law and remove any unfair advantage that Tutor Perini may have secured from its actions.
- (19) The undersigned represent that they are authorized to enter into this Agreement.

**California Air Resources Board**

Signature:   
Print Name: Dr. Todd P. Sax  
Title: Chief, Enforcement Division  
Date: 8/24/18

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

Signature:   
Print Name: CHRIS DIXON  
Title: PROJECT MANAGER  
Date: 8/15/18

# ATTACHMENT A

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Mitigation #1: Electrify Compressors										
					Emission Factor NOx	Emission Factor PM	NOx Emissions (lbs)	NOx Emissions (tons)	PM Emissions (lbs)	PM Emissions (tons)
Equipment Type	Number	HP	Hours of Use	Load Factor	(g/bhp-hr)	(g/bhp-hr)				
Portable Air Compressors	5	1500	31,200	0.48	2.6	0.15	128,648.46	64.32	7,422.03	3.71
Note: Although 5 Air Compressors will be on site, only three will typically operate at a time.										
Note: Hours of use is based on three compressors of five operating at a time. Actual hours may be higher.										
<b>Mitigation Comparison</b>										
		<b>Required</b>	<b>Proposed</b>	<b>Sufficient?</b>						
	NOx (lbs)	77,317.41	128,648.46	Yes						
	PM (lbs)	6,003.71	7,422.03	Yes						