

COUNCIL MEETING  
December 19, 2006

Honorable Mayor and Members  
of the Torrance City Council  
City Hall  
Torrance, California

Members of the Council:

**SUBJECT: Fire Department – Authorize the Fire Chief to execute a Municipal Mutual Aid Agreement with Southern California Industrial Mutual Aid Organization (SCIMO). Expenditure: As needed/required on a case-by-case basis.**

### **RECOMMENDATION**

The Fire Chief recommends that the City Council authorize the Fire Chief to execute a Municipal Mutual Aid Agreement with Southern California Industrial Mutual Aid Organization (SCIMO).

### **Funding**

Depending on the amount, funding will be available in the Fire Department Operating Budget or will be requested on a case-by-case basis if needed to reimburse responding SCIMO members for damaged or lost equipment or for wages of their employees after the first four (4) hours of a response.

### **BACKGROUND/ ANALYSIS**

SCIMO is an organization whose primary purpose is the joining together of fire-fighting, rescue, hazardous material manpower, resources and facilities among Southern California private industries and governmental response organizations for mutual assistance in case of emergency situations, either natural or man-made, including but not limited to acts of war or terrorism.

The City will join SCIMO as a Government Member to access SCIMO resources in the event of an emergency in Torrance and to provide standby availability of, and the actual provision of, assistance with respect to emergency fire protection and other public safety matters on the terms and conditions set forth with the Agreement. As a Government Member, the City will not pay dues or fees and will not be allowed to serve as an Officer in the SCIMO Corporation.

The term of the Agreement begins from the effective date and ends on December 31, 2007, and thereafter, the term will be renewed automatically, without notice, for successive one-year terms beginning on each January 1 and ending on each December 31, unless earlier terminated pursuant to Sections 2.2 and 2.4 of the Agreement.

There is no obligation on any SCIMO Member to contribute equipment or manpower to any particular emergency. Participation is wholly voluntary based on the needs and availability of SCIMO Member to respond. Thus, there is no liability on a SCIMO Member for failing to respond under this Agreement.

Each Government Member receiving assistance from SCIMO Members may replace material used, and repair or replace any equipment damaged or lost in the control of a fire or emergency situation, under the control of the Government Member receiving assistance in kind or in cash at current prices, at the discretion of the responding Member; provided that the material and/or equipment was furnished by SCIMO Members in response to a properly placed request. Wage reimbursement for responding SCIMO Members' employees shall be granted after the first 4 hours of a response and shall be based on the employee's salary or hourly rate multiplied by a factor of 1.4 to cover overhead.

Reimbursement of damaged or lost equipment is required without regard to cause or causes thereof (including damage or loss caused by pre-existing conditions) or the negligence of any party or parties including the owner or operator, whether such negligence be sole, joint or concurrent, active or passive. SCIMO or any member may decide to forgive the cost of Mutual Aid Services that they rendered as part of this agreement by either a vote of general membership or by the member who provided the resources.

The members of SCIMO include companies that produce, transport, own, use, refine and/or store chemical, oil, and/or petroleum products in or near the Greater Los Angeles Metropolitan area. The members of SCIMO may also include municipalities and governmental entities.

The attached SCIMO Municipal Mutual Aid Agreement was approved as to form by the City Attorney's Office.

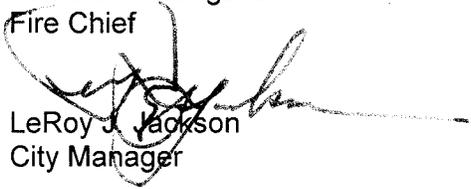
Respectfully submitted,

RICHARD V. BONGARD  
Fire Chief

  
By Neli Mileva  
Administrative Analyst

CONCUR:

  
Richard V. Bongard  
Fire Chief

  
LeRoy J. Jackson  
City Manager

Attachment A. SCIMO Municipal Mutual Aid Agreement

SCIMO Municipal Mutual Aid Agreement  
Approved at SCIMO General Membership Meeting – 12/5/06

## SCIMO MUNICIPAL MUTUAL AID AGREEMENT

THIS MUNICIPAL MUTUAL AID AGREEMENT (“*Agreement*”) is made as of the 5th day of December, 2006, by and between the undersigned Governmental Entity or Municipality (“*Government Member* ” or “*SCIMO Government Member*”) and Southern California Industrial Mutual-Aid Organization (“*SCIMO*” or “*SCIMO Corporation*”), a California non-profit corporation.

### RECITALS

- A. SCIMO is an organization whose primary purpose is the joining together of fire-fighting, rescue, hazardous material manpower, resources and facilities among Southern California private industries and governmental response organizations for mutual assistance in case of emergency situations, either natural or man-made, including but not limited to acts of war or terrorism.
- B. The Members of SCIMO include companies that produce, transport, own, use, refine and/or store chemical, oil, and/or petroleum products in or near the Greater Los Angeles Metropolitan area. The Members of SCIMO may also include municipalities and governmental entities.
- C. Government Members are those organizations which have an additional need for fire protection services, but do not meet the requirements of SCIMO General Membership as set forth in the Bylaws of SCIMO. Government Members may include, but not be limited to, governmental entities and municipalities.
- D. The Government Member agrees to become a Member to support the efforts of SCIMO with respect to industrial fire protection and response, to access SCIMO resources in the event of an emergency in the Government Member’s jurisdictional area, and to provide standby availability of, and the actual provision of, assistance with respect to emergency fire protection and other public safety matters in its jurisdictional area on the terms and conditions set forth herein. The Government Member shall in no respects become a Member for personal gain of its entity or organization.
- E. The Government Member is a Member of SCIMO and is entitled and obligated to enter into this Agreement.

## AGREEMENTS

In consideration of the promises and mutual covenants set forth in this Agreement, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

**“Articles of Incorporation”** shall mean the Articles of Incorporation of the SCIMO Corporation that are in effect and may be amended from time to time.

**“Bylaws”** shall mean the Bylaws of the SCIMO Corporation that are in effect and may be amended from time to time.

**“Defend”** shall mean to: (1) provide legal counsel and defense to the SCIMO Corporation and the SCIMO Member(s), or at the SCIMO Corporation’s and the SCIMO Member(s)’ option, to reimburse the SCIMO Corporation and the SCIMO Member(s) for all reasonable attorneys’ fees generated by counsel selected by the SCIMO Corporation and the SCIMO Member(s); and (2) pay all other costs of defense including all appeal and supersedeas bonds.

**“Government Member”** or **“SCIMO Government Member”** shall be a Member which does not meet the requirements of General Membership pursuant to the SCIMO Bylaws, but desires additional fire protection coverage and access to SCIMO resources in the event of an emergency in its jurisdictional area under SCIMO. Government Members are not obligated to pay dues or fees, except in the case of publicly-owned utilities or petroleum resources. A Government Member will not be allowed to serve as an Officer in the SCIMO Corporation.

**“Member”** or **“SCIMO Member”** as used herein shall include any member of SCIMO as defined under this or any other member agreement or any affiliate of a SCIMO Member that is owned by, which owns, or is under common ownership with a SCIMO Member. Any affiliate which shall at anytime cease to own, be owned by, or be under common ownership with the SCIMO Member shall cease at such time to be an affiliate of that Member.

**“Non-member”** shall mean any company or entity which is not a Member of the SCIMO Corporation or a party to this Agreement.

**“Officer”** shall be a Chairman, First Vice-Chairman/Treasurer, Second Vice-Chairman/Secretary, Inspection Officer and Drill/Training Officer as defined in the Bylaws, and such other officers of SCIMO as may be determined from time to time by the Members.

**“SCIMO”** or **“SCIMO Corporation”** shall mean Southern California Industries Mutual-Aid Organization, its successors, assigns, agents, employees, officers and directors. These terms

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do not include the individual members of SCIMO which are referred to variously as: “*Member*,” “*Member of SCIMO*,” and “*SCIMO Member*.”

## ARTICLE II

### TERM AND TERMINATION

#### 2.1 Term.

The term of this Agreement shall begin on the effective date hereof and end on December 31, 2007. Thereafter, the term shall be renewed automatically, without notice, for successive one-year terms beginning on each January 1 and ending on each December 31, unless earlier terminated pursuant to either Section 2.2 or Section 2.3.

#### 2.2 Termination Upon Termination of Membership.

This Agreement shall terminate, without notice, automatically and concurrently upon the effective date the Government Member ceases to be a Member of SCIMO.

#### 2.3 Termination Upon Dissolution of SCIMO.

This Agreement shall terminate without notice, automatically and concurrently upon dissolution of SCIMO.

## ARTICLE III

### SERVICES

#### 3.1 General.

SCIMO is an organization whose primary purpose is the joining together of fire-fighting, rescue, hazardous material manpower, resources and facilities among Southern California private industries and governmental response organizations for mutual assistance in case of emergency situations, either natural or man-made, including but not limited to acts of war or terrorism. Each Member of SCIMO is responsible for maintaining resources in the form of trained emergency personnel and equipment sufficient to control fire and emergencies of the type and magnitude that could be reasonably anticipated to occur at the Member’s facility or location.

### **3.2 Request for Services.**

A Government Member can request SCIMO to respond to its locations as needed. SCIMO shall not be obligated to respond, but will respond to the extent of available resources from its various Members.

### **3.3 Designated Emergencies – Notification.**

In the event of an actual or potential fire or emergency situation and if the Government Member desires additional emergency personnel and equipment, then the Government Member shall promptly notify SCIMO of the actual or potential fire or emergency situation using the SCIMO General Operating Procedures and SCIMO Dispatch Procedures. The notification shall include the location, nature and size of the actual or potential fire or emergency situation, if known, and the type of assistance needed. The initial notification may be given orally to a SCIMO Officer. The SCIMO Corporation shall retain documentation concerning the request for assistance.

### **3.4 Designated Emergencies – Response.**

Upon receipt of the notice, SCIMO (or one or more of its Officers) should notify appropriate officials and SCIMO Member(s) according to prearranged plans. All aid reporting to the affected location will park in designated staging areas as directed by officials of the Government Member and will act directly under the supervision of the officials of the Government Member at scene of the emergency. In all cases where response is made, the assistance must wait at the designated staging area of the emergency until it receives instructions to engage under the Incident Command System as described in the Bylaws.

### **3.5 Designated Emergencies – Participation Voluntary.**

There is no obligation on any SCIMO Member to contribute equipment or manpower to any particular emergency. Participation in any particular emergency is wholly voluntary based on the needs and availability of a SCIMO Member to respond. Thus, there is no liability on a SCIMO Member for failing to respond to an emergency situation of a SCIMO Government Member under this Agreement.

### **3.6 Multiple Emergencies.**

SCIMO shall respond to emergency requests on a first come first serve basis. SCIMO has no obligation to respond to more than one emergency at a time unless SCIMO Members release resources as they become available.

### **3.7 Designated Emergencies – Activity Direction.**

Any Government Member requesting aid must designate a representative to meet such aid as it is dispatched, provide a designated staging area, at, and/or directions to, the emergency scene. Officials of the Government Member receiving assistance will be responsible for directing fire fighting or emergency activities under a unified command system. Officials of the Government Member receiving assistance may request a SCIMO specialist to provide consultation, advice, or otherwise assist as needed.

## **ARTICLE IV**

### **REIMBURSEMENT**

#### **4.1 Member Reimbursement.**

Each Government Member receiving assistance from other SCIMO Members may replace material used, and repair or replace any equipment damaged or lost, to control a fire or emergency situation, under the control of the Government Member receiving assistance, in kind or in cash at current prices, at the discretion of the responding Member; provided that, the material and/or equipment was furnished by SCIMO Members in response to a properly placed request under Section 3.2. Wage reimbursement for responding SCIMO Members' employees shall be granted after the first four (4) hours of a response. Wages shall be based on the employee's salary or hourly rate multiplied by a factor of 1.4 to cover such Member's overhead. Reimbursement of any community notification made on behalf of the Government Member by the SCIMO Corporation or other SCIMO Members shall be made by the Government Member.

Reimbursement of damaged or lost equipment is required without regard to the cause or causes thereof (including damage or loss caused by pre-existing conditions) or the negligence of any party or parties, including the owner or operator, whether such negligence be sole, joint or concurrent, active or passive.

#### **4.2 Damage and Replacement.**

Damage to and loss of equipment refers to damage and loss as a result of the emergency situation rather than from the wear and tear expected in the normal operation of the equipment. The owner of damaged or lost equipment is entitled to replacement of the equipment if repair of the equipment is not feasible for economic or other reasons. The cost of replacement in that circumstance will be the current cost, in the Greater Los Angeles Metropolitan Area, of new equipment with specifications similar to that of the equipment to be replaced. The current cost of new, similar equipment is to be determined as of the date of the damage or loss that necessitates the replacement of the equipment.

#### **4.3 Reimbursement For Services Provided to Non-Members.**

From time to time, SCIMO Government Members, in the event of an actual or potential fire or emergency situation at a Non-member's facility or involving a Non-member's property (such as a tanker truck fire on a public street), will request additional emergency personnel and equipment from SCIMO to respond to the fire or emergency situation. In the event the Non-member refuses to execute the SCIMO NON-MEMBER EMERGENCY INCIDENT ASSISTANCE AND REMIBURSEMENT AND INDEMNIFICATION AGREEMENT, the Government Member is responsible for replacing material used, and repairing or replacing any equipment damaged or lost, in the control of the fire or emergency situation within the receiving Non-member's facilities or involving a Non-member's property (such as a tanker truck fire on a public street), in kind or in cash at current prices.

Reimbursement of damaged or lost equipment is required without regard to the cause or causes thereof (including damage or loss caused by pre-existing conditions) or the negligence of any party or parties including the owner or operator, whether such negligence be sole, joint or concurrent, active or passive. Reimbursement by the Government Member is not contingent upon reimbursement by the Non-member to the Government Member.

#### **4.4 Survivability.**

All provisions concerning reimbursement obligations under this Agreement shall survive the termination of this Agreement.

#### **4.5 Gross Negligence, Willful Misconduct.**

The reimbursement provisions of Sections 4.1, 4.2 and 4.3 are inapplicable to the extent that material or equipment is damaged or lost by reason of gross negligence or willful misconduct of the party seeking reimbursement.

#### **4.6 Cost Forgiveness.**

SCIMO or any Member of SCIMO may decide to forgive the cost of services that they rendered as part of this Agreement. This decision will either be made by a vote of the General Membership or by the SCIMO Member(s) who directly provided resources to the request for assistance.

## ARTICLE V

### INDEMNIFICATION

#### 5.1 Member Indemnification.

**Each Member receiving assistance from SCIMO Members shall indemnify, defend and hold harmless (a) SCIMO; and (b) each and every SCIMO Member and the agents, directors, officers and employees thereof providing assistance (both (a) and (b) hereinafter “Indemnified Parties”), from and against any and all demands, causes of action, damages, injuries, fines (including penalties or other charges or costs imposed by any federal, state or local authority), liability, attorneys’ fees, litigation costs and expenses, and losses of any kind or character for sickness, injury to or death of any person (including any employee), and for loss or damage to any property owned or operated by the SCIMO Corporation, a SCIMO Member, or any other person or entity (including any equipment and any natural resources) resulting directly or indirectly from the receiving Member’s use of equipment or employees or from the response actions undertaken by other SCIMO Members.**

This indemnification is applicable to all events occurring:

- A. On the actual property of the Government Member receiving assistance; or
- B. During emergencies at a location under the control of the Government Member receiving assistance (such as the incident scene). Demands, causes of action, damages, injuries, fines, liability, losses of any kind or character for sickness, injury to or death of any person (including any employee), and for loss or damage to any property occurring away from a location under the control of a Government Member receiving assistance or away from a location under the emergency control of the Government Member receiving assistance, will be governed by common law; or
- C. While responding to a request for assistance.

#### 5.2 Gross Negligence, Willful Misconduct, Criminal Law.

Each Member agrees that the indemnities provided for in this Agreement shall be effective regardless of the negligent acts or omissions of the Indemnified Parties whether such negligence be sole, joint or concurrent, active or passive and regardless of whether liability without fault is imposed on the Indemnified Parties, except to the extent that liability arises by reason of the gross negligence or willful misconduct of the Indemnified Parties. In addition, no Member shall be liable to any Indemnified Party for any claims or penalties arising out of or resulting from the intentional violation of any criminal law by an Indemnified Party.

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### **5.3 Insurance.**

Each Government Member also covenants and agrees that the indemnity and hold harmless provisions are not limited, restricted, or in any way affected by the amount of insurance carried by the indemnifying Government Member.

### **5.4 Non-member Indemnification.**

Prior to the provision of services or releases of equipment and material, SCIMO or any SCIMO Member(s) shall obtain or attempt to obtain indemnification similar to the indemnification provisions of this Article from any Non-member in connection with the receipt of services.

### **5.5 Survivability.**

All indemnity provisions contained herein shall survive the termination of this Agreement.

## **ARTICLE VI**

### **COMPLIANCE WITH LAWS AND REGULATIONS**

The SCIMO Corporation shall use its best efforts to comply with all laws, regulations, decrees, codes, ordinances, resolutions and other acts of any governmental authority, including without limitation, all federal, state or local laws and regulations.

## **ARTICLE VII**

### **COMMITTEES AND ANNUAL DUES**

#### **7.1 Steering Committee.**

As part of this Agreement and pursuant to the Bylaws, the Government Member shall be granted one (1) seat on the SCIMO Steering Committee to assist SCIMO in determining the needs of both industry and the communities within which SCIMO Members own facilities. As a member of the Steering Committee, the Government Member will be allowed one (1) vote as a SCIMO Member at regularly scheduled SCIMO Meetings.

#### **7.2 Annual Dues.**

Government Members are not required to pay annual dues, except in the case of publicly-owned utilities and petroleum resources. If a Government Member is a publicly-owned utility or petroleum resource, the annual dues required for such Government Member

shall not exceed \$\_\_\_\_\_ annually. The annual dues shall be determined by the Board of Directors of SCIMO and reviewed annually.

## ARTICLE VIII

### MISCELLANEOUS

#### **8.1 Representatives of the Government Member.**

The Representative(s) of the Government Member, appointed from time to time, shall represent the Government Member in its communications and transactions with the SCIMO Corporation and other Members under this Agreement. The SCIMO Corporation and its Members shall be entitled to rely upon the power and authority of the Representative(s) to represent and bind the Government Member in all matters pertaining to this Agreement

#### **8.2 Amendments.**

This Agreement may not be amended, modified, supplemented or otherwise altered except as agreed to in writing by SCIMO and the Government Member, pursuant to an approval of a majority of the Members of the SCIMO Corporation.

#### **8.3 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

#### **8.4 Attorneys Fees.**

In the event that any legal action is instituted between the parties pertaining to the interpretation or enforcement of the terms of this Agreement, the prevailing party shall be entitled to recover a reasonable allowance for attorney's fees and court expenses, to be fixed and determined by the court in which such action is filed.

#### **8.5 Notices.**

Except for initial oral notices relating to requests for assistance in connection with an emergency, any notice provided for by this Agreement and any other notice, demand or communication which any Member may wish to send to another Member shall be in writing and either delivered to such Member in person, sent via a nationally recognized express mail service, sent via facsimile transmission with receipt confirmed, or sent by first-class U.S. mail, postage prepaid, return receipt requested, and addressed to the Member at such Member's address as set forth in the records of the SCIMO Corporation, or to such other address as any Member shall specify by written notice.

**8.6 Procedures Upon Receipt of Notice.**

Upon receipt of any notice, statement or other instrument received under any agreement to which the SCIMO Corporation or its Members are parties or pursuant to any claim against the SCIMO Corporation or its Members, SCIMO Corporation shall immediately relate the contents of such notice, statement or other instrument to each SCIMO Member in the same manner in which notices are given under Section 7.5. If the instrument is one which shall have a material adverse effect upon the SCIMO Corporation or its assets, the SCIMO Corporation shall notify each Member by the quickest communication device reasonably available.

**8.7 Severability.**

If any provision of this Agreement or portion thereof should be declared invalid for any reason, the invalid provisions or portion thereof shall be deemed omitted and the remaining terms shall nevertheless be carried into effect.

**8.8 Waiver.**

The waiver of a breach of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition.

**8.9 Enforcement by Creditors.**

No provision of this Agreement shall be for the benefit of or enforceable by any creditors of a SCIMO Government Member or any creditors of the SCIMO Corporation.

**8.10 Number and Gender.**

Whenever required by the context, the singular number shall include the plural, and the masculine or neutral gender shall include all genders.

**8.11 Entire Agreement.**

This Agreement contains the entire understanding between the parties and supersedes any prior written or oral agreements between them respecting the subject matter contained herein.

**8.12 Assignment; Binding Effect.**

A SCIMO Government Member may not assign its rights and obligations under this Agreement. Subject to and without affecting the prohibitions herein with respect to assignment, this Agreement shall be binding on the parties and their respective successors and assigns.

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**8.13 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

**8.14 Claims.**

Nothing in this Agreement shall entitle any person or entity not a party to this Agreement to institute any claims, causes of action, remedy, or right of any kind arising out of the operations conducted pursuant to this Agreement.

**[SIGNATURES ON NEXT PAGE]**

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IN WITNESS WHEREOF, the parties have executed this Municipal Mutual Aid Agreement as of the date first above written.

**SOUTHERN CALIFORNIA INDUSTRIAL MUTUAL-AID ORGANIZATION  
("SCIMO")**

By \_\_\_\_\_  
Ralph Sproul  
SCIMO Chairman

**CITY OF TORRANCE, a Municipal Corporation**

By \_\_\_\_\_  
Richard V. Bongard  
Fire Chief