ORDINANCE NO. 5555

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING ORDINANCE NO. 5484, THE 2009-2011 MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SANTA BARBARA AND THE SANTA BARBARA CITY SUPERVISORY EMPLOYEES' BARGAINING UNIT (SUPERVISORS' UNIT) TO INCLUDE A SUPPLEMENTAL AGREEMENT

THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. The 2009-2011 Memorandum of Understanding between the City of Santa Barbara and the Santa Barbara City Supervisory Employees Bargaining Unit, adopted by Ordinance No. 5484 on March 24, 2009, is hereby amended to include the Supervisors Supplementary Agreement, dated as of June 14, 2011, attached hereto and incorporated herein by reference as Exhibit A.

SECTION 2. The City Administrator is authorized to apply the changes to salaries and benefits contained in this supplemental agreement to the City's confidential supervisors.

Exhibit A

SUPERVISORS SUPPLEMENTARY AGREEMENT
June 14, 2011

SUPPLEMENTAL AGREEMENT BETWEEN THE CITY AND THE SUPERVISORY EMPLOYEES' BARGAINING UNIT REGARDING FURLOUGH AND OTHER LABOR MEASURES

Pursuant to Section 3.12 of the Municipal Code of the City of Santa Barbara and Section 3500 et seq. of the Government Code, the duly authorized representatives of the City of Santa Barbara ("The City") and the Santa Barbara City Employee Supervisor Association ("The Association"), having met and conferred in good faith, agree that the existing 2009-2011 Memorandum of Understanding (MOU) shall be supplemented with the following agreement:

1. **MODIFIED TERM**: The term of the existing Memorandum of Understanding reflected in Article 50, and initially extended by Ord. No. 5516 through June 30, 2011, will be extended through June 30, 2012.

2. **SALARY AND BENEFIT CHANGES**: Subject to the requirements of Equity Clause, below, the Association agrees to all of the following measures:
   a. Measures to Achieve One-time (or "Temporary") Budget Savings
      i. Furlough:
         1. During Fiscal Year 2011-2012, each Supervisory Unit employee except the Sworn Harbor Patrol Supervisor will be subject to an unpaid furlough of **101 hours** (prorated for part-time employees) on the terms included in the attached Mandatory Unpaid Furlough Plan (Attachment A), and
         2. During Fiscal Year 2011-2012, the Sworn Harbor Patrol Supervisor will be subject to an unpaid furlough of **48 hours** (prorated for part-time employees) on the terms included in the attached Mandatory Unpaid Furlough Plan (Attachment A).
      ii. Vacation Cash Out: The vacation cash-out provision of the MOU (1.2% value), referenced in Article 54 of the MOU, will be suspended during the July 2011-June 2012 Fiscal Year (i.e., the fall 2011 cash-out) on the same terms outlined in Article 54, subsection "c" of the MOU, and
      iii. Sworn to pay 3% of salary to PERS: Sworn employees in the Police Safety Plan (currently just the Harbor Patrol Supervisor) will contribute toward PERS pension benefits, as follows:
         1. Effective June 18, 2011, sworn employees will participate in retirement cost-sharing by paying **3.0%** of earnings to the City through post-tax payroll

deductions in the manner contemplated by Govt Code § 20516(f). Such payments will not be credited under the retirement system. Such payments will not affect the City's payment of the 9% EPMC.

2. Effective September 24, 2011, employees will begin to cost share Govt Code § 20516 in the same amount and through the same method as City of Santa Barbara Police Officers under the labor agreement applicable to those positions.

3. **PERSONAL LEAVE**: There will be an exception to the general rule that personal leave days must be taken by the end of each fiscal year or lost.
   a. As previously agreed, personal leave days awarded in July 2010 must be taken by the end of fiscal year 2011-2012 (i.e., no later than June 30, 2012). In no case shall employees be entitled to cash payment for personal leave days not taken.
   b. Personal leave days awarded in July 2011 may be used over a period of two fiscal years, but must be taken by the end of fiscal year 2012-2013 (i.e., no later than June 30, 2013). In no case shall employees be entitled to cash payment for personal leave days not taken.
   c. If an employee can demonstrate that the employee lost more than 4 hours or more of vacation accrual between July 1, 2011 and June 30, 2012 solely by reason of having reached the vacation accrual maximum ("vacation cap"), the employee will be awarded one additional personal leave hour for FY 2012-2013 for each vacation hour not accrued during FY 2011-2012, not to exceed a maximum of 20 additional personal leave hours. To be eligible for this, the employee must submit a written request to the payroll office identifying the pay periods during which the employee lost vacation accrual no later than June 30, 2012. These additional hours must be taken no later than June 30, 2013. In no case shall employees be entitled to cash payment for personal leave days not taken.

4. **EQUITY ("ME TOO") CLAUSE** The parties acknowledge that the Association is willing to concede to the extended MOU term and salary and benefit changes listed above on the condition that the City achieves similar concessions from the General Employees Bargaining Unit, represented by SEIU Local 620 (hereinafter the "General Unit").
   a. Similar Concessions: For purposes of this section "similar concessions" from the General Unit means an agreement (or extension to the agreement, or a unilateral adoption of a last, best, and final offer, etc.) beyond the existing labor agreement terms and conditions which achieves net labor cost savings in Fiscal Year 2011-2012 at least equivalent to 6% (6 times the 1% Number With Roll-Up for the General Unit, listed on Attachment B), and

b. Adjustment Methodology: In the event that the City does not achieve similar concessions from the General Unit, concessions from the Association will be adjusted as follows:

i. If the net budget savings in Fiscal Year 2011-2012 (whether one-time/temporary or ongoing/permanent) are not at least equivalent to 6% (6 times the 1% Number With Roll-Up for the General Unit, listed on Attachment B), the one-time/temporary budget measures listed above will be reduced by an equivalent factor of the 1% Number for the Association, listed on Attachment B, through a reduction in the unpaid furlough

ii. Notwithstanding the above, a variance in one-time or ongoing budget savings during FY 2011-2012 of less than 0.5% of salary (0.5 times the General Unit 1% number with roll-up) will be considered de minimis and will not trigger an adjustment to this agreement.

iii. For variances in one-time or ongoing budget savings of greater than or equal to 0.5%, adjustments to concessions will be made by 0.5% for each full 0.5% difference between the Association's Concessions and the General Unit Concessions.

iv. Given that labor negotiations with the General Unit may extend beyond the effective date of concessions under this Agreement, the budget savings measures under this Agreement will be implemented as planned, and will be adjusted retroactively, as appropriate, when negotiations with the General Unit are concluded.

c. Effect of Position Eliminations: The one percent numbers in Attachment B are based on proposed budgeted staffing levels as of the date of this agreement. If one or more positions in the General Unit or the Association are eliminated from the FY 2011-2012 budget as it is adopted by the City Council in June 2011, the 1% numbers reflected in Attachment B will be equitably adjusted downward by 1% of the salary plus roll-up cost of those eliminated positions and any equitable adjustments under this agreement will be based on the adjusted 1% numbers.

d. The comparability of "net budget savings" from various labor concessions will be determined by the Finance Director who will provide a detailed explanation of his findings, upon request, to the Association. If the Association disagrees with the Finance Director's determination, the Association may appeal this decision in writing to the City Administrator, citing the specific bases of disagreement. The City Administrator will respond within 20 days and his decision will be final.

5. **REOPENER ON NON-ECONOMIC ISSUES**:

The Association may request to reopen negotiations during the term of this agreement to consider 1) the establishment of a Health Reimbursement Arrangement (HRA) to allow employees to contribute to a retirement trust account (such as a Section 115 Trust) for retirement health savings purposes, and 2) no more than three additional non-economic conditions of employment. Such request will be made by a single written notice served to the City no sooner than September 1, 2011 and no later than September 30, 2011. Such negotiations will commence within 30 days of the written notice.

6. **REOPENER IN THE EVENT OF LAYOFFS**: Nothing in this Supplemental Agreement shall restrict the right of the City Council to make permanent reductions in workforce for economic reasons if the City's financial position has significantly changed, as authorized under the Santa Barbara City Charter, including but not limited to Sections 1007 and 1008, and the Santa Barbara Municipal Code. However, prior to the implementation of any layoffs proposed during the remaining term of the MOU, the City will provide the Association with a minimum of 60 days notice and the immediate opportunity to meet and confer over any negotiable impacts of such layoffs not contained in the current MOU.

7. **DEVELOPMENT OF SALARY DATA**: The City agrees to conduct a total compensation survey in collaboration with the Association during the term of the agreement and make every effort to have the results finalized prior to the expiration of the agreement, for reference during negotiations for a successor agreement. This may be waived by agreement between the parties.

8. **SEVERABILITY-** If any provision of this Supplemental Agreement is held unenforceable, then such provision will be modified to reflect the intention of the parties. All remaining provisions of the Supplemental Agreement shall remain in full force and effect.

FOR THE CITY

Kristine Schmidt
Employee Relations Manager

Barbara Barker
Human Resources Manager

Michael Pease
Budget Manager

FOR THE ASSOCIATION

Victor Garza
President

Rob Badger
Information Systems Supervisor

Judd Conley
Waterfront Maintenance Superintendent

Araceli Esparza
Purchasing Supervisor

Exhibit A - Attachment A

CITY OF SANTA BARBARA
FISCAL YEAR 2012
MANDATORY UNPAID FURLOUGH PLAN
Supervisors
(Dated April 23, 2011)

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I. Purpose

The purpose of this mandatory unpaid work furlough plan is to:

- Allow the City to address anticipated revenue shortfalls and increased expenses in Fiscal Year 2012 while minimizing the need for service cuts and staff layoffs; and
- Establish, in advance, a clear and understandable method to mitigate the impacts of a work furlough on affected employees.

II. Definitions

"Work furlough" refers to one or more hours of required unpaid leave taken on a consecutive or intermittent basis.

III. Application

1. This policy applies to employees in the Supervisory Employees Bargaining Unit.
2. Nothing in this plan shall restrict the right of the City to make bonafide permanent reductions in workforce, nor to otherwise reduce work hours for economic reasons, as authorized under the Santa Barbara City Charter, including but not limited to Sections 1007 and 1008, and the Santa Barbara Municipal Code. However, the City acknowledges that such alternate work reductions may trigger a separate duty to meet and confer with the City's recognized labor organizations about such decision(s) and/or the effects of such decisions on employees.

IV. Declaration and Scheduling of Mandatory Work Furlough

1. Implementation: This Mandatory Furlough Plan will be implemented to include the number of furlough hours contained in the Agreement between the City and the Association, prorated for part-time employees, or such lesser amount as may result from the Equity ("me too") Clause contained in the Agreement between the City and the Association.

2. Scheduling of Furlough: The City will have the sole authority to schedule the furlough periods, and such decisions shall not be subject to grievance or appeal.

   a) General Furlough Closure: The City will observe a General Furlough Closure, during which many City offices and operations will be closed.

      Many employees in operations that are subject to the General Furlough Closure, and in other operations, will be scheduled to take furlough time off during these furlough closure dates. However, some employees will be scheduled to work during such closure periods based on City operational needs, or by mutual agreement between the employee and the employee's supervisor.

   b) Furlough Time Off Bank: Any furlough hours not scheduled to be taken as part of a General Furlough Closure shall become part of an employee's furlough time off bank. Employees will be scheduled to take the furlough time off at another time after July 1, 2011 but before June 29, 2012. Such time off shall be scheduled on the same terms as vacation under the applicable Memorandum of Understanding or other City policy.

   c) Rescheduling Furlough Time Off: If an employee is not able to take furlough time off as originally scheduled, the furlough hours will become part of the employee's Furlough Time Off Bank and will be rescheduled as provided in subsection "b", above. Supervisors will be encouraged, where practicable, to make reasonable efforts to avoid disruption to employees if scheduled furlough time off must be rescheduled (e.g. by finding qualified volunteers). However, this may not always be possible.

3. Application to Work Groups and Positions:

a) Although this plan may be applied uniformly to all supervisory employees Citywide, the City may also apply this policy differentially to all or some work groups or positions at its discretion. Such decisions shall not be subject to grievance or appeal. For example:

(1) The City may decide not to furlough certain work groups or positions because they are performing essential or contracted functions, because compensation is paid from restricted funding sources, or for any other business reason.

(2) The City may also decide to furlough some work groups or positions at different times or for different durations than other work groups or positions for any business reason.

4. Application to Voluntary Hours Reduction Requests: Once a mandatory furlough is declared for Fiscal Year 2012 under this plan, employees who offered to voluntarily reduce their hours to part-time under the "Part-Time Work" Policy or to take an unpaid leave of absence under the "Leave of Absence Without Pay, Non-Medical Reasons" Policy during Fiscal Year 2012 will be provided an opportunity to rescind their voluntary part-time schedule or unpaid leave request.

5. Work During Furlough: No employee may perform work for the City during the furlough period unless authorized by management.

V. Effect of Mandatory Work Furlough on Employee Pay

1. Pay Reduction: The period of furlough time off will be unpaid. Furlough time off will be tracked under a separate unpaid hours code.

2. Non Exempt Employees- Pay Mitigation Plan:

a) For non-exempt employees, the wage loss from the mandatory furlough will be distributed evenly over the full fiscal year. Effective the first full pay period in Fiscal Year 2012, beginning on June 18, 2011, a bi-weekly deduction will be made from employee compensation in an amount equivalent to 1/26th of the total unpaid mandatory furloughed time through the end of the last pay period of Fiscal Year 2012, ending on June 29, 2012.

b) Mutual Reimbursement:

(1) For employees in active paid status as of the beginning of the fiscal year who terminate employment within the fiscal year:

(a) If, at the time of termination, the reduction in pay exceeds the furlough time off taken, the employee will be entitled to pay for the difference.

(b) If, at the time of termination, furlough time off taken exceeds the reduction in pay, the employee will need to reimburse the City for the difference in pay.

(2) An employee who is hired or otherwise enters active paid status after the beginning of the fiscal year will be scheduled for furlough time off and will have his or her pay reduced by an amount equivalent to 1/26th of the total furloughed time for the first 26 pay periods of employment. The employee will be subject to the same mutual reimbursement provisions in Section (1) above, if the employee terminates employment before the 26 pay periods are complete.

(3) An employee who is on unpaid status for any other reason at any point during the fiscal year will, upon return to active paid status, be scheduled to make up any furlough hours not taken and will continue to have his or her pay reduced by an amount equivalent to 1/26th of the total furloughed time until 26 full pay periods of reduction have been achieved. The employee will be subject to the same mutual reimbursement provisions in Section (a) above, if the employee terminates employment before the 26 pay periods are complete.

3. <u>Exempt Employees</u>

a) Exempt employees will be considered non-exempt employees under the Fair Labor Standards Act (FLSA) guidelines in any FLSA workweek in which one or more hours of unpaid furlough time off occurs (See 29 CFR 541.710(b)). Such employees will be eligible for hourly pay for any work performed during that FLSA workweek, just as non-exempt employees would be. Such employees may also be eligible for overtime compensation during any such FLSA workweek according to applicable FLSA guidelines.

For purposes of this provision only, the FLSA workweek of an otherwise exempt employee will be the City's standard FLSA workweek, beginning and ending at midnight on Friday night, regardless of the employee's regular work schedule.

b) Exempt Employees- Pay Mitigation Plan: Exempt employee pay will be reduced under the same Pay Mitigation Plan outlined for non-exempt employees in Section V.2, above.

(a) The City and the affected bargaining units agree that is our mutual good faith interpretation of 29 CFR 541.710(b) that the City may implement a pay mitigation plan for exempt employees without affecting the exempt status of such employees under the FLSA to a greater degree than expressed in Section V.3(a), above.

(b) If the City receives an opinion from the U.S. Department of Labor or other binding legal authority that indicates that the pay mitigation plan for exempt employees further affects the exempt status of such employees, the City will promptly notify the affected represented bargaining units and the parties will reopen negotiations within 30 days of such notice to determine an alternate method of furlough pay deductions that will preserve such employees' exempt status.

(c) Management employees must sign an agreement to participate in the Pay Mitigation Plan, otherwise the full pay deductions will be taken in the pay period(s) in which the furlough time off actually occurs.

VI. Benefits During a Mandatory Work Furlough

1. Health, Life, and Cafeteria Plan Benefits: An employee shall receive continued medical, dental, vision, life insurance, and cafeteria plan benefits, including any City contribution, at the level the employee would have received absent the work furlough. Employees will be responsible for the same employee contributions to these benefits that they would have made absent the work furlough.

2. Retirement: To the extent allowable by CalPERS, and in compliance with any restrictions imposed by CalPERS, the City will ensure that retirement benefits will not be adversely impacted as a result of the furlough and related reduction in hours and/or salary.

3. Other Benefits: Other benefits may be reduced as required under normal benefit rules related to work schedule or unpaid leave. Such benefits include, but are not limited to: disability insurance or SDI/PFL contributions, Medicare contributions, etc.

4. Paid Leave Accrual: Employees will receive the same vacation, sick leave, personal leave, and management leave accruals they would have received absent the work furlough.

5. Legal Holidays: Employees on a work furlough shall receive legal holiday pay as follows:

   a) Employees in classifications entitled to accrue holiday credit will continue to receive the same holiday credit.

   b) For employees who do not accrue credit, where a legal holiday is observed during a period of work furlough, the employee will be paid hours for that holiday at the same level employee would have received absent the work furlough. In other words, that holiday will not count as an unpaid furlough day. For employees on a 9/80 or 4/10 schedule, the employee may be required to use accrued paid leave banks to make up the full paid holiday, as usual.

6. Use of Paid Leave: An employee will not be permitted to use accrued paid leave banks (vacation, sick leave, compensatory time, personal or management leave) during the unpaid furloughed hours.

7. Vacation Accruals: Management will make every reasonable effort to work with employees to avoid loss of vacation accruals or personal leave due to encroachment on accrual caps or time limits for use.

8. Standby and Call-back: An employee may be assigned to call-back or standby during a work furlough as provided under the applicable labor agreement or City policy. An employee called-back to active paid work during the unpaid furlough period will be required to take equivalent additional unpaid furlough during the remainder of the fiscal year.

9. Service & Seniority: Furlough shall not count as a break in City service and shall not affect seniority or eligibility for merit increases.

10. Schedule Changes: While an employee is on a furlough, schedule changes will be subject to the requirements of the applicable labor agreement

11. Overtime: Employees will only be eligible for overtime premium that they would have received absent the reduction in work hours (i.e., for over 40 hours in a workweek).

12. Probationary Period: Probationary periods shall not be affected by a mandatory furlough.

13. Limits on Benefit Continuation: Special benefit continuation under this furlough plan is available only to employees during their mandatory unpaid furlough period(s). Otherwise, employees are covered by benefit continuation under other City policies, including the City's applicable Leave Without Pay policies.

Exhibit A- Attachment B

1% number for all funds with roll-up effective July 2011, at current budgeted staffing levels, assuming no labor concessions from existing agreements.

Unit	1% With Roll-Up ALL Funds
General Unit (SEIU)	320,611.63
Supervisors Association	86,541.12

ORDINANCE NO. 5555

STATE OF CALIFORNIA)
)
COUNTY OF SANTA BARBARA) ss.
)
CITY OF SANTA BARBARA)

I HEREBY CERTIFY that the foregoing ordinance was introduced on June 14, 2011, and was adopted by the Council of the City of Santa Barbara at a meeting held on June 21, 2011, by the following roll call vote:

AYES: Councilmembers Dale Francisco, Frank Hotchkiss, Grant House, Randy Rowse, Michael Self, Bendy White; Mayor Helene Schneider

NOES: None

ABSENT: None

ABSTENTIONS: None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on June 22, 2011.

Cynthia M. Rodriguez, CMC
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on June 22, 2011.

Helene Schneider
Mayor