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CITY OF OAKLAND



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June 6, 2017

HONORABLE CITY COUNCIL
Oakland, California

**Subject: RESOLUTION AUTHORIZING AND APPROVING
SETTLEMENT OF THE CITY'S LAWSUIT AGAINST
DEFENDANT AMBAC ASSURANCE CORPORATION IN THE
AMBAC BOND INSURANCE CASES FOR AMBAC
ASSURANCE CORPORATION'S, PAYMENT OF \$754,888.44**

Dear President Reid and Members of the City Council:

This resolution authorizes and approves settlement of the City's lawsuit against defendant Ambac Assurance Corporation ("Ambac Assurance") in *Ambac Bond Insurance Cases*, JCCP 4555, San Francisco Superior Court Case No. CJC-08-004555 (City of Oakland v. Ambac Financial Group, Inc., et al., San Francisco Superior Court Case No. CGC-08-479241). Defendant Ambac Assurance will pay the City \$754,888.44 under the settlement agreement and be dismissed from the litigation.

In 2008, the City filed this lawsuit against various bond insurers who conspired with each other and with the major credit rating agencies to maintain a dual rating system that unfairly rated pending municipal bond issuances lower than corporate bonds. This conspiracy violated the antitrust laws and forced Oakland and other municipalities to purchase bond insurance as a credit enhancement in order to issue bonds without having to offer extremely high interest rates. As a result of the conspiracy, the City suffered hundreds of thousands of dollars in damages because it had to pay higher rates for bond insurance.

The complaint also alleges claims for fraud and breach of contract against two of the bond insurers, Syncora Guarantee, Inc. (f/k/a XL Capital Assurance, Inc.) and Ambac,¹ alleging that they failed to disclose their exposure to risky subprime debt and

¹ Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp. (f/k/a Financial Security Assurance, Inc.) ("FSA"), MBIA Inc., MBIA Insurance Corp., MBIA Insurance Corp. of Illinois, and Syncora Guarantee, Inc. (f/k/a XL Capital Assurance, Inc.). The Syncora settlement was finalized in March 2014; the FSA settlement was finalized in October 2014.

HONORABLE CITY COUNCIL

June 6, 2017

**Subject: Resolution Approving Settlement of Claims in Ambac Bond Insurance Cases,
JCCP 4555, San Francisco Superior Court Case No. CJC-08-004555**

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other financial instruments which caused the City's interest payments on its auction rate securities to spike and forced the City to engage in costly refundings of those issuances.

As noted above, Ambac will pay the City \$754,888.44 in exchange for dismissal by the City of Oakland. After the deduction of fees and costs, Oakland's estimated *net* recovery from the Ambac Assurance settlement will be approximately \$666,711.45.

This settlement proposal will be presented to the Council in closed session on June 6, 2017. The resolution authorizes the City Attorney to execute a settlement agreement consistent with the terms of the settlement proposal.

We recommend that the City Council adopt the resolution.

Respectfully submitted,


BARBARA J. PARKER
City Attorney

Attorney(s) Assigned:
Kathleen Salem-Boyd
Outside Counsel

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City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING AND APPROVING SETTLEMENT OF THE CITY'S LAWSUIT AGAINST DEFENDANT AMBAC ASSURANCE CORPORATION IN THE AMBAC BOND INSURANCE CASES FOR AMBAC ASSURANCE CORPORATION'S, PAYMENT OF \$754,888.44

WHEREAS, in 2008, the City filed *Ambac Bond Insurance Cases*, JCCP 4555, San Francisco Superior Court Case No. CJC-08-004555 (City of Oakland v. Ambac Financial Group, Inc., et al., San Francisco Superior Court Case No. CGC-08-479241) ("the Action"), alleging that various bond insurers violated antitrust laws by conspiring with each other and the major credit rating agencies to unfairly rate municipal bond issuances and committed fraud and breached their contracts with the City; and

WHEREAS, as a result of these egregious violations, the City of Oakland suffered hundreds of thousands of dollars of damages because the City had to pay higher prices for municipal bond insurance; and

WHEREAS, the City Council having been briefed on the proposed settlement of the Action against defendant Ambac Assurance Corporation ("Ambac Assurance") for the amount of seven hundred fifty-four, eight hundred eighty-eight dollars and forty-four cents (\$754,888.44); and

WHEREAS, after the deduction of fees and costs, the City's estimated *net* recovery from the proposed settlement will be approximately \$666,711.45; and

WHEREAS, the lawsuit will continue against the other defendants; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Attorney to settle the lawsuit against defendant Ambac Assurance in *Ambac Bond Insurance Cases*, JCCP 4555, San Francisco Superior Court Case No. CJC-08-004555, City Attorney Matter No. X03170, for Ambac Assurance's payment to the City of \$754,888.44; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Attorney to execute the settlement agreement consistent with this Resolution, including dismissing the lawsuit against defendant Ambac Assurance with prejudice.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB,
KAPLAN AND PRESIDENT REID

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

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