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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
Barbara J. Parker  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-3254

December 18, 2017

**HONORABLE CITY COUNCIL**  
Oakland, California

**Subject: RESOLUTION AUTHORIZING AND APPROVING  
SETTLEMENT OF THE CITY'S LAWSUIT AGAINST  
DEFENDANTS MBIA INC., MBIA INSURANCE CORPORATION,  
NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION,  
AND JASON KISSANE (COLLECTIVELY, "MBIA") IN THE  
AMBAC BOND INSURANCE CASES FOR MBIA'S PAYMENT  
OF \$50,000**

Dear President Reid and Members of the City Council:

This resolution authorizes and approves settlement of the City's lawsuit against defendants MBIA Inc., MBIA Insurance Corporation, National Public Finance Guarantee Corporation, and Jason Kissane (collectively, "MBIA") 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 MBIA will pay the City \$50,000 under the settlement agreement and be dismissed from the litigation.

To date, City has received \$690,599.42 from settlements with other defendants. 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 hundred 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

HONORABLE CITY COUNCIL

December 18, 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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Ambac,<sup>1</sup> alleging that they failed to disclose their exposure to risky subprime debt and 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, MBIA will pay the City \$50,000 in exchange for dismissal by the City of Oakland. After the deduction of fees and costs, Oakland's estimated *net* recovery from the MBIA settlement will be approximately \$37,836.19.

This settlement proposal will be presented to the Council in closed session on December 12, 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,



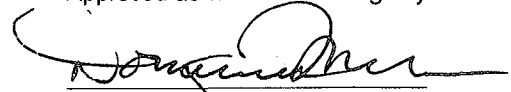
BARBARA J. PARKER  
City Attorney

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

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<sup>1</sup> 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; and the settlement with Ambac Assurance Corporation was finalized in July 2017.

  
Oakland City Attorney's Office

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# OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

**RESOLUTION AUTHORIZING AND APPROVING SETTLEMENT OF THE CITY'S LAWSUIT AGAINST DEFENDANTS MBIA INC., MBIA INSURANCE CORPORATION, NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION, AND JASON KISSANE (COLLECTIVELY, "MBIA") IN THE AMBAC BOND INSURANCE CASES FOR MBIA'S PAYMENT OF \$50,000**

**WHEREAS**, in 2008, the City filed a lawsuit in the San Francisco County Superior Court against the City's lawsuit against defendants MBIA Inc., MBIA Insurance Corporation, National Public Finance Guarantee Corporation, and Jason Kissane (collectively, "MBIA") in and several municipal bond insurance companies alleging claims for fraud, breach of contract, and an antitrust conspiracy; and

**WHEREAS**, to date the City has received a total of \$690,599.42 from settlements with other defendants; and

**WHEREAS**, on December 12, 2017, the City Council approved in closed session a settlement of the lawsuit in which MBIA would pay the City \$50,000 in exchange for dismissal of the lawsuit by the City with prejudice; now, therefore, be it

**RESOLVED:** That the City Attorney is authorized and directed to settle the City's lawsuit against defendants MBIA Inc., MBIA Insurance Corporation, National Public Finance Guarantee Corporation, and Jason Kissane (collectively, "MBIA") in the *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), and to accept payment in the amount of \$50,000 MBIA in exchange for dismissal with prejudice of the litigation by the City.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

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