

AMBAC Proposed Payoff to City Council 10/21/22

**INTER**

**OFFICE**

**MEMO**

**To: HARRISBURG CITY COUNCIL**  
**From: Michael Parker, City Clerk**  
**LEGISLATIVE APPROVAL FORM**

**Date: October 21, 2022**

**LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE**

**BILL NO. -2022      RESOLUTION NO. 64-2022**

**THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR' S OFFICE ON:**

Neil A. Grover  
City Solicitor

10/21/2022  
Date

**Requested by Department/Bureau:** *MAYOR*

**Department/Bureau Contact Person:** *MAYOR/ DAN HARTMAN*

**For Action on or before:** *DEC 1, 2022*

**The attached was received in the Office of the City Clerk for introduction on**

\_\_\_\_\_

**Received by:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**RESOLUTION NO. 64-2022**

Moved by: \_\_\_\_\_

A Resolution approving the Third Proposed 2022 Budget Reallocation, authorizing a prepayment in accordance with the terms of the *Third Amended and Restated Settlement Agreement* between the City of Harrisburg and Ambac Assurance Corporation.

**WHEREAS**, the Council of the City of Harrisburg approved the *Third Amended and Restated Settlement Agreement* (“the Agreement”) between the City of Harrisburg (“City”) and Ambac Assurance Corporation (“Ambac”) on May 21, 2021, in accordance with the provisions of Resolution 29-2021; and

**WHEREAS**, the City secured the requisite approval of the Agreement from the Commonwealth Court of Pennsylvania by an Order of September 20, 2021; and

**WHEREAS**, the City and Ambac executed the final agreed version of the Agreement with an Effective Date of November 23, 2021, a true and correct copy of which is attached as Exhibit “A”; and

**WHEREAS**, as of the Effective Date, the City Liability related to prior defaults on certain 1997 bond obligations equaled \$26,572,028.38, for which the City received certain prepayment credits for an actual prepayment of \$4,000,000.00, plus a Prepayment Factor of 1.38, in accordance with the Agreement; and

**WHEREAS**, Section 3.8 of the Agreement sets forth payment terms, which provide in relevant part that effective March 15, 2023, the City shall be obligated to make semi-annual payments in the amount of \$1,944,452.61 until the debt is fully satisfied; and

**WHEREAS**, Section 3.11 of the Agreement further provides that “[t]he City may prepay any amount outstanding and owed by the City to the Insurer under the Agreement in whole or part and from time to time on the fifteenth (15<sup>th</sup>) day of any month”; and

**WHEREAS**, the City has made full and timely payments on all budgeted debt service obligations in accordance with the approved 2022 Annual Budget, with no remaining unencumbered budgetary authority for an additional 2022 debt payment from the Debt Service Fund or otherwise; and

**WHEREAS**, the Mayor has determined that it is financially prudent and, in the City’s, best interest to prepay the remaining City Liability on or before December 15, 2022, in

- full payoff in 2022

COH  
 SCHEDULE OF BOND INSURER (AMBAC) ACTIVITY - GO BONDS/NOTES, SERIES OF 1997  
 (settlement agreement stated interest rate of 6.75%)

<u>Date</u>	<u>Ambac Advance</u>	<u>Ambac Legal</u>	<u>City Re-payment</u>	<u>Calculated Interest</u>	<u>Remaining Balance</u>	<u>Principal Paymt Portion</u>	<u>Interest Paymt Portion</u>
3/15/12	5,265,000.00				5,265,000.00		
9/15/12	3,400,000.00			177,693.75	8,842,693.75		
3/15/13	5,205,000.00	400,000.00		298,440.91	14,746,134.66		
9/15/13	3,465,000.00			497,682.04	18,708,816.71		
12/23/13			(6,000,000.00)	343,774.51	13,052,591.22	5,585,067.08	414,932.92
3/15/14	470,000.00		(11,069.00)	200,683.59	13,712,205.81	10,147.50	921.50
9/15/14	530,000.00		(11,069.00)	462,786.95	14,693,923.75	9,846.76	1,222.24
3/15/15	400,000.00		(11,069.00)	495,919.93	15,578,774.68	9,567.93	1,501.07
9/15/15	600,000.00		(11,069.00)	525,783.65	16,693,489.32	9,292.83	1,776.17
3/15/16	325,000.00		(11,069.00)	563,405.26	17,570,825.59	9,051.20	2,017.80
9/15/16	675,000.00		(11,069.00)	593,015.36	18,827,771.95	8,791.79	2,277.21
3/15/17	250,000.00		(11,069.00)	635,437.30	19,702,140.26	8,583.73	2,485.27
9/15/17	-		(11,069.00)	664,947.23	20,356,018.49	8,334.00	2,735.00
3/15/18	-		(11,069.00)	687,015.62	21,031,965.11	8,061.91	3,007.09
9/15/18	-		(11,069.00)	709,828.82	21,730,724.94	7,798.70	3,270.30
3/15/19	-		(11,069.00)	733,411.97	22,453,067.90	7,544.09	3,524.91
9/15/19	-		(76,429.00)	757,791.04	23,134,429.94	50,389.62	26,039.38
3/15/20	-		(11,069.00)	780,787.01	23,904,147.95	7,059.53	4,009.47
9/15/20	-		(76,429.00)	806,764.99	24,634,483.95	47,153.07	29,275.93
3/15/21	-		(11,069.00)	831,413.83	25,454,828.78	6,606.09	4,462.91
9/15/21	-		(76,429.00)	859,100.47	26,237,500.25	44,124.42	32,304.58
11/23/21	-		(7,288,900.00)	334,528.13	19,283,128.38	4,155,090.93	3,133,809.07
3/15/22	-		(11,069.00)	299,959.77	19,572,019.16	6,213.31	4,855.69
9/15/22	-		(76,429.00)	489,300.48	19,984,890.63	41,855.18	34,573.82
12/15/22	-		(20,234,701.77)	249,811.13	(0.00)	10,944,420.34	9,290,281.43
<b>Totals</b>	<b>20,585,000.00</b>	<b>400,000.00</b>	<b>(33,984,283.77)</b>	<b>12,999,283.77</b>		<b>20,985,000.00</b>	<b>12,999,283.77</b>

City of Harrisburg/AMBAC Forbearance Liability  
 Repayment Schedule, November 23, 2021

Date	Beginning Balance	Interest Rate	Calculated Interest	Additional Repayment	Payment to Ambac	Remaining Balance
9/15/2021						26,237,500.25
11/23/2021	26,237,500.25	6.75%	334,528.13	-	7,288,900.00	19,283,128.38
11/24/2021	19,283,128.38	5.00%	2,678.21	-	-	19,285,806.59
3/15/2022	19,283,128.38	5.00%	297,281.56	-	11,069.00	19,572,019.15
9/15/2022	19,572,019.15	5.00%	489,300.48	-	76,429.00	19,984,890.63
3/15/2023	19,984,890.63	5.00%	499,622.27*	-	1,944,452.61	18,540,060.29
9/15/2023	18,540,060.29	5.00%	463,501.51*	-	1,944,452.61	17,059,109.18
3/15/2024	17,059,109.18	5.00%	426,477.73	-	1,944,452.61	15,541,134.30
9/15/2024	15,541,134.30	5.00%	388,528.36	-	1,944,452.61	13,985,210.05
11/23/2024	13,985,210.05	5.00%	132,082.54	-	-	14,117,292.59
3/15/2025	14,117,292.59	6.75%	293,689.41	-	1,944,452.61	12,466,529.39
9/15/2025	12,466,529.39	6.75%	420,745.37	-	1,944,452.61	10,942,822.15
3/15/2026	10,942,822.15	6.75%	369,320.25	-	1,944,452.61	9,367,689.79
9/15/2026	9,367,689.79	6.75%	316,159.53	-	1,944,452.61	7,739,396.71
3/15/2027	7,739,396.71	6.75%	261,204.64	-	1,944,452.61	6,056,148.74
9/15/2027	6,056,148.74	6.75%	204,395.02	-	1,944,452.61	4,316,091.15
3/15/2028	4,316,091.15	6.75%	145,668.08	-	1,944,452.61	2,517,306.61
9/15/2028	2,517,306.61	6.75%	84,959.10	-	1,944,452.61	657,813.10
3/15/2029	657,813.10	6.75%	22,201.19	-	680,014.30	(0.01)
9/15/2029	(0.01)	6.75%	(0.00)	-	-	(0.01)
3/15/2030	(0.01)	6.75%	(0.00)	-	-	(0.01)
9/15/2030	(0.01)	6.75%	(0.00)	-	-	(0.01)
3/15/2031	(0.01)	6.75%	(0.00)	-	-	(0.01)
9/15/2031	(0.01)	6.75%	(0.00)	-	-	(0.01)
3/15/2032	(0.01)	6.75%	(0.00)	-	-	(0.01)
9/15/2032	(0.01)	6.75%	(0.00)	-	-	(0.01)

$$\Sigma * = \$963,123.78 \div 365 = \$2,638.70/\text{DAY}$$

4,028.555  
 in interest savings

City of Harrisburg  
 General Fund-Fund Balance Projection

	<u>Balance @ 9/30/2022</u>		<u>Projected Oct-22</u>		<u>Projected Nov-22</u>		<u>Projected Dec-22</u>		<u>Projected 12/31/2022</u>
Revenue	\$ 63,709,377	<sup>(1)</sup>	\$ 2,478,147	<sup>(3)</sup>	\$ 6,577,238	<sup>(5)</sup>	\$ 4,666,687	<sup>(7)</sup>	\$ 77,431,449
Expenditures	\$ (53,234,402)	<sup>(1)</sup>	\$ (4,754,467)	<sup>(4)</sup>	\$ (4,115,590)	<sup>(6)</sup>	\$ (4,683,210)	<sup>(8)</sup>	\$ (66,787,668)
Fund Balance	\$ 34,949,812	<sup>(2)</sup>	\$ 32,673,493		\$ 35,135,140		\$ 35,118,618		
					AMBAC		<u>\$ (20,234,702)</u>		
							\$ 14,883,916		

<sup>(1)</sup> Per Efinance.

<sup>(2)</sup> Agrees with Bureau of Financial Management.

<sup>(3)</sup> Average of October 2019-2021 revenue less amounts for guaranteed parking and pension system state aid.

<sup>(4)</sup> Average of October 2019-2021 expenditures.

<sup>(5)</sup> Average of November 219-021 revenue less amounts for guaranteed parking.

<sup>(6)</sup> Average of November 2019-2021 expenditures less amounts for AMBAC paydown and HRA bond defeasance.

<sup>(7)</sup> Average of December 2019-2021 revenue less amounts for guaranteed parking, one-time sink-hole reimbursement and state fire protection revenue.

<sup>(8)</sup> Average of December 2019-2021 expenditures.

accordance with the Agreement, in order to save in excess of \$1,200,000.00 in accrued interest in 2023, and in excess of \$3,700,000.00 in accrued interest over the life the Agreement; and

**WHEREAS**, the City's present uncommitted General Fund balance is sufficient to cover the proposed one-time prepayment, while allowing for anticipated year-end cash-on-hand to provide for the continued fiscal stability of the City; and

**WHEREAS**, the Third Proposed 2022 Budget Reallocation provides for an appropriation of uncommitted General Fund dollars for an interfund transfer to the Debt Service Fund in the amount of \$20,234,702.00, as more fully set forth and described in attached Exhibit "B".

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG**, that the Third Proposed 2022 Budget Reallocation, authorizing a prepayment in accordance to the terms of the *Third Amended and Restated Settlement Agreement* between the City of Harrisburg and Ambac Assurance Corporation, consistent with the details set forth in Exhibits "A" and "B", which are incorporated herein as if fully set forth, hereby is approved and is to be implemented immediately.

**BE IT FURTHER RESOLVED** that the Mayor, Controller, Business Administrator, and all other appropriate City officials are hereby authorized and directed to take all steps necessary to effectuate this Resolution.

I second this resolution: \_\_\_\_\_

# EXHIBIT A

**THIRD AMENDED AND RESTATED SETTLEMENT AGREEMENT**

This Third Amended and Restated Settlement Agreement (as may be amended, modified, supplemented, or amended and restated from time to time, the "**Agreement**"), dated as of November 23, 2021 (the "**Effective Date**"), amends and restates the Second Amended and Restated Settlement Agreement (the "**Second Amended and Restated Settlement Agreement**"), effective as of April 1, 2013, by and among the now former Receiver on behalf of the CITY OF HARRISBURG, a municipal corporation of the Commonwealth of Pennsylvania (the "**City**") and AMBAC ASSURANCE CORPORATION, a Wisconsin stock insurance corporation (the "**Insurer**") (each a "**Party**" and collectively the "**Parties**"). Capitalized terms used but not otherwise defined herein shall have the meanings set forth in Article II below.

**RECITALS**

**PART I: 1997 GENERAL OBLIGATION BONDS**

A. On November 25, 1997, the City enacted Ordinance No. 21-1997 (the "**1997 Ordinance**") authorizing the issue of (i) General Obligation Refunding Bonds, Series D of 1997 (the "**Series D Bonds**") in the aggregate principal amount of \$24,891,771.10 and (ii) General Obligation Refunding Notes, Series F of 1997 in the aggregate principal amount of \$26,632,302.75 (the "**Series F Notes**", and together with the Series D Bonds, the "**1997 Bonds**"). The City subsequently issued the 1997 Bonds.

B. The Insurer issued that certain Financial Guaranty Insurance Policy Number 14431BE with an effective date of December 30, 1997 (the "**1997 Insurance Policy**"), pursuant to which the Insurer agreed to make scheduled payments of principal or interest on the 1997 Bonds as required under the 1997 Insurance Policy.

C. On April 6, 2012, the Insurer filed a complaint against the City and others in the Court of Common Pleas of Dauphin County, Pennsylvania, thereby commencing Case No. 2012-cv-2840-cv (the "**Action**").

D. The City defaulted under the 1997 Bonds pursuant to Sections 10 and 12 of the 1997 Ordinance. The Insurer made payments under the 1997 Insurance Policy to holders of the 1997 Bonds.

E. The Parties and their counsel engaged in good faith, arms' length settlement discussions regarding a consensual resolution of potential disputes between and among the Parties arising out of or related to the 1997 Bonds and the 1997 Insurance Policy, ultimately agreeing to be bound by the terms of the Second Amended and Restated Settlement Agreement.



## PART II: 2005 STADIUM BONDS

F. On November 23, 2004, the City enacted Ordinance No. 36-2004 (the "**2005 Ordinance**"), authorizing the execution and delivery of its guaranty with regard to the issuance by the Redevelopment Authority of the City of Harrisburg (the "**Redevelopment Authority**") of Federally Taxable Guaranteed Variable Rate Revenue Bonds (Stadium Project), Series A-2 of 2005 (the "**2005 Bonds**") in the aggregate principal amount of \$9,000,000.00. The Redevelopment Authority subsequently issued the 2005 Bonds under and pursuant to that Trust Indenture dated as of January 1, 2005, as supplemented by that First Supplemental Trust Indenture dated as of February 1, 2005 (collectively, the "**2005 Indenture**").

G. The Insurer issued that certain Financial Guaranty Insurance Policy Number 23461BE with an effective date of February 10, 2005, pursuant to which the Insurer agreed to make scheduled payments of principal or interest on the 2005 Bonds as required under such policy.

H. The 2005 Bonds have been timely paid through the Issuer and the City and Insurer has not been required to make payments thereon.

## PART III: A THIRD AMENDED AND RESTATED AGREEMENT

I. Based on the occurrence of certain events since the execution of the Second Amended and Restated Settlement Agreement, the Parties desire to amend and restate the Second Amended and Restated Settlement Agreement by execution of this Agreement. The Parties and their counsel engaged in good faith, arms' length settlement discussions regarding such amendment and restatement.

J. The Parties now resolve to integrate an agreed resolution of the outstanding 2005 Bonds obligations as part of this Third Amendment, without suggestion of default on the obligations, for the convenience of the Parties.

K. As part of the Parties' negotiated settlement as reflected in this Agreement, the City will be authorized and shall enter into this Agreement, which will result in concessions for the benefit of the City.

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

### **ARTICLE I CONFIRMATION OF DEFAULT**

Section 1.1. The City hereby acknowledges that its failures to make the required debt service and sinking fund payments under the 1997 Bonds on March 15, 2012,

September 15, 2012, and March 15, 2013 constituted a default (the "**Default**") in the City's obligations under the 1997 Ordinance, the 1997 Bonds and other applicable law.

## **ARTICLE II DEFINITIONS**

Section 2.1. Incorporation of Preamble and Recitals. The preamble and recitals set forth above are incorporated by reference and are explicitly made a part of this Agreement.

Section 2.2. Definitions. In addition to the capitalized terms defined in the preamble and recitals, the following definitions shall apply to and constitute part of this Agreement and all schedules, exhibits and annexes hereto:

"Adjustment Period" shall mean the period of time commencing on the Effective Date and ending on the earlier of, as applicable, (a) the first date on which the City fails to make a payment required under Section 3.8 hereof as and when due, and (b) the first date on which the City fails to make a payment under the 1997 Bonds as and when due.

"Applicable Interest Rate" shall mean:

(a) Provided the Defeasance occurs on or prior to the Defeasance Date:

(i) For a period of three (3) years from the Effective Date the rate of 5.0% per annum.

(ii) After the third anniversary of the Effective Date, the rate of 6.75% per annum.

(b) Notwithstanding anything herein to the contrary, in the event (i) the City fails to make a payment required under Section 3.8 hereof on or before the applicable payment due date, (ii) the City fails to make any payment on the 1997 Bonds as and when due, (iii) the City fails to make any payment required under its guaranty of the 2005 Bonds as and when due, or (iv) the Defeasance does not occur on or prior to the Defeasance Date, the rate of 7.75% per annum at all times after the Effective Date, and retroactive to the Effective Date, subject to Section 3.10 hereof.

"Bankruptcy Case" shall have the meaning ascribed to it in Section 3.7 hereof.

"City Liability" shall mean (i) the total amount of all claim payments made by the Insurer pursuant to the 1997 Insurance Policy, plus (ii) any reimbursable fees and expenses incurred by the Insurer which are owed to the Insurer by the City under this Agreement (as amended, modified, supplemented, or amended and restated from time to time), plus (iii) interest accrued on the foregoing (and compounded on interest on the

foregoing as applicable) through the Effective Date, less (iv) any amounts repaid by the City, (v) as may be adjusted from time to time after the Effective Date pursuant to the terms hereof, including without limitation by the inclusion of interest compounded hereunder. As of the Effective Date, the City Liability is \$26,572,028.38.

**“Conditions to Forbearance”** shall mean the conditions to forbearance under this Agreement, as defined in Section 3.1(b) hereof.

**“Defeasance”** shall mean the legal defeasance of all outstanding 2005 Bonds in accordance with Article X of the 2005 Indenture, pursuant to documents in the form and substance acceptable to the Insurer.

**“Defeasance Date”** shall mean December 31, 2021.

**“Defeasance Prepayment”** shall have the meaning ascribed to it in Section 3.9 hereof.

**“Prepayment Factor”** shall have the meaning ascribed to it in Section 3.11(a) hereof.

**“Recovery Plan”** shall mean the judicially approved recovery plan (as that term is defined in the Municipalities Financial Recovery Act (Act of Jul. 10, 1987, P.L. 246, No. 47)) for the City, as the same may be amended from time to time, providing, *inter alia*, for terms consistent with this Agreement, including the treatment of the 1997 Bonds and the Insurer as set forth herein.

Section 2.3. **Interpretation.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof will arise favoring or disfavoring any Party hereto because of the authorship of any provision of this Agreement.

Section 2.4. **General Rules of Construction.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Defined terms in the singular shall include the plural as well as the singular, and vice versa.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to “generally accepted accounting principles” refer to such principles as they exist at the date of application there.

(c) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(e) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(f) The term "person" shall include any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization and any government or agency or political subdivision thereof.

### **ARTICLE III SETTLEMENT TERMS**

#### Section 3.1. Forbearance.

(a) Subject to the express provisions of this Agreement, the Insurer agrees to forbear from exercising its rights and remedies under the 1997 Bonds, the 1997 Ordinance and other applicable law.

(b) The agreement to forbear is conditioned upon and subject to the following Conditions of Forbearance, and the City covenants as follows:

(i) The City shall cause the Defeasance to occur on or prior to the Defeasance Date, and promptly after the occurrence of the Defeasance shall disclose that the Defeasance has occurred and that all 2005 Bonds have been legally defeased to maturity, in a disclosure that is in the form and substance acceptable to the Insurer, on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website and to Bloomberg Municipal Markets.

(ii) The City shall make all payments on the 1997 Bonds as and when they become due.

(iii) The City shall make all payments due to the Insurer as and when they become due pursuant to Section 3.8 hereof.

(iv) Except with written consent of the Insurer (which consent the Insurer shall give or refuse within five (5) business days after receiving from the City a written request for consent and all information requested by the Insurer reasonably necessary to evaluate the request), so long as any portion of the City Liability remains outstanding, the City shall not issue any additional bonds or incur any additional indebtedness, or grant a lien or security interest in, or otherwise encumber, any of its

general fund revenues, including its tax revenue; provided, however, that the City may effectuate the Defeasance in accordance with this Agreement and may issue Tax Anticipation Notes (as that term is defined in Government Unit Debt Act, 53 Pa. Con. Stat. Ann. § 8001 *et seq.*) with a maturity of no more than one (1) year from the date of issuance and in the total aggregate principal amount outstanding not to exceed \$5 million at any time.

(v) The City shall execute and deliver any and all documents, as requested by the Insurer, required by or in connection with the Recovery Plan or any related court order, including an order approving this Agreement, to implement the provisions of this Agreement.

Section 3.2. Waiver of Defenses Based on Passage of Time. The City hereby waives all defenses, whether equitable or at law, including statute of limitations and laches, based on the passage of time between April 6, 2012 and subsequent assertion by the Insurer of any claims related to (i) the 1997 Bonds or the 1997 Ordinance, including without limitation claims previously asserted in the Action; or (ii) enforcement of the City's obligations under this Agreement.

Section 3.3. City's Rights Under 1997 Insurance Policy. The Insurer maintains that the City has no rights under, and no rights to enforce, the 1997 Insurance Policy, and nothing in this Agreement shall be interpreted as Insurer's acknowledgement that the City has any such rights. However, the City may assert claims of breach of this Agreement against the Insurer based on the Insurer's non-performance of its obligations herein. Nothing in this Agreement shall be construed to

(a) Confer upon the City any additional rights under, or any additional rights to enforce, the 1997 Insurance Policy that the City would not otherwise have in the absence of this Agreement; or

(b) Limit rights, if any, that the City may presently have under the 1997 Insurance Policy.

Section 3.4. Non-Performance. Only upon any noncompliance by the City with any of the Conditions of Forbearance or noncompliance with any of the other provisions of this Agreement, the 1997 Ordinance, the 1997 Bonds or other applicable law, the Insurer shall have all of the following rights and remedies. Each right and remedy provided in this Section 3.4 is distinct from all other rights or remedies under this Agreement, the 1997 Bonds, the 1997 Ordinance, or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Any single or partial exercise of any right or remedy hereunder shall not preclude any further exercise thereof or the exercise of any further right or remedy.

(a) To commence a legal or equitable action against the City to enforce the terms of this Agreement.

(b) To commence a legal or equitable action against the City to enforce the City's obligations under the 1997 Bonds, the 1997 Ordinance or other applicable law. Without limiting the foregoing, such legal action may re-assert the claims previously asserted in the Action and seek an Order of Mandamus. Subject to Section 3.2, the City reserves its rights to assert defenses to such legal action.

Section 3.5. No Waiver. The execution and delivery of this Agreement by the Insurer shall not constitute a waiver by the Insurer of any default under the 1997 Ordinance, the 1997 Bonds or other applicable law, including, but not limited to, the Default or the continuation of the Default. Nothing in this Agreement constitutes a general waiver of any provisions under the 1997 Bonds, the 1997 Ordinance or other applicable law or a waiver of any future breach of its obligations under the 1997 Bonds, the 1997 Ordinance or other applicable law by the City. This Agreement only obligates the Insurer to forbear from taking action due to the Default in the manner, and subject to the conditions, stated in this Agreement.

Section 3.6. No Defenses. The City represents that as of the time of the execution and delivery of this Agreement, it is unaware of any defenses against any of its obligations under the 1997 Bonds and the 1997 Ordinance, or any claims, defenses, counterclaims, offsets or recoupments against the Insurer for any reason whatsoever arising out of the 1997 Bonds or the relationship between the Parties resulting from the 1997 Bonds.

Section 3.7. Bankruptcy. In the event the City files a petition seeking protection under, and thereby commences a case pursuant to, chapter 9 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Case"):

(a) The City shall include the terms of this Agreement in the plan of adjustment filed pursuant to 11 U.S.C. § 941 and, except to the extent the court presiding over the Bankruptcy Case prohibits, shall honor and perform this Agreement during the pendency of the Bankruptcy Case; and

(b) The Insurer shall vote in favor of such plan unless it is inconsistent with the terms of this Agreement or the City has failed to comply with Section 3.7(a) hereof, provided however that nothing in this Agreement shall affect or limit the Insurer's rights, including voting rights, as insurer, subrogee, assignee or holder of indebtedness or an obligation of the City other than the 1997 Bonds.

Section 3.8. Payments. The City shall pay the City Liability and interest accrued thereon to the Insurer according to the following terms and the wiring instructions in Schedule 1:

(a) Interest shall accrue on the then outstanding amount of the City Liability at the Applicable Interest Rate commencing on the Effective Date.



(b) Interest shall compound semi-annually, on March 15 and September 15 of each year, and any interest accrued as of such date that is not paid on such date shall be added to the City Liability as of such date.

(c) Day count shall be 30 / 360.

(d) On each of March 15, 2021 and March 15, 2022, the City shall make a payment of \$11,069.

(e) On each of September 15, 2021 and September 15, 2022, the City shall make a payment of \$76,429.

(f) On each of March 15 and September 15 of 2023, and on each March 15 and September 15 of each year thereafter, the City shall make a payment of \$1,944,452.61 until the City Liability and accrued interest thereon are extinguished (or if the amount of the City Liability and accrued interest are less than that amount on a payment date, such lesser amount as would be sufficient to extinguish the City Liability and accrued interest).

(g) Within forty-five (45) days after the Defeasance Date, if the City Liability or interest accrued thereon remains outstanding, then the Insurer shall provide the City with a calculation of the City Liability and accrued interest, and a payment schedule showing the remaining payments to be made pursuant to Section 3.8(f) hereof and the date upon which the City Liability and accrued interest will be extinguished, assuming the City makes all remaining payments required hereunder. The Insurer's calculation of the amount of the City Liability, interest accrued thereon, and payment schedule shall be binding on the City absent manifest error.

(h) Whenever the City makes a prepayment under Section 3.11 hereof, and provided that the City Liability or interest accrued thereon remains outstanding thereafter, the Insurer shall reduce the amount of the City Liability and accrued interest in accordance with Section 3.11 hereof and, within forty-five (45) days of the prepayment date, provide the City with a calculation of the amount of the City Liability and accrued interest, and a payment schedule showing the payments remaining to be made pursuant to Section 3.8(f) hereof and the date upon which the City Liability and accrued interest will be extinguished, assuming the City makes all remaining payments required hereunder. The Insurer's calculation of the City Liability, interest accrued thereon, and payment schedule shall be binding on the City absent manifest error.

(i) If the City fails to make a payment required under this Section 3.8, or a payment on the 1997 Bonds (or related obligations) as and when due, then, in addition to any rights and remedies the Insurer may have hereunder, or under the 1997 Bonds, the 1997 Ordinance or otherwise, the Insurer shall calculate the revised amount of the City Liability, subject to Section 3.10 hereof, and, within forty-five (45) days of the date of the missed payment, shall provide the City with a calculation of the amount of the City Liability and interest accrued thereon, and a payment schedule showing the remaining

payments to be made pursuant to Section 3.8(f) hereof and the date upon which the City Liability and accrued interest will be extinguished, assuming the City makes all remaining payments required hereunder. The Insurer's calculation of the City Liability, interest accrued thereon, and payment schedule shall be binding on the City absent manifest error.

(j) The Insurer shall apply any payments received from the City pursuant to Section 3.8 or Section 3.11 hereof first to the accrued interest and apply the balance to reduce the City Liability.

Section 3.9. Defeasance Prepayment. The City shall cause the Defeasance to occur on or before the Defeasance Date. If the Defeasance occurs on or prior to the Defeasance Date, then following the Defeasance, an amount equal to 38% of the par amount of the 2005 Bonds so defeased shall be deemed a prepayment of the City Liability made by the City effective as of the Defeasance Date (the "Defeasance Prepayment"), as contemplated by Section 3.11(a) of this Agreement, but shall not be multiplied by the Prepayment Factor.

Section 3.10. Adjustment of City Liability In the Event of Missed Payment or Failure to Defeasance.

(a) If the City fails to make a payment required pursuant to Section 3.8 hereof, or fails to make a payment on the 1997 Bonds (or related obligations) as and when due, then, in addition to any rights and remedies the Insurer may have hereunder, or under the 1997 Bonds, the 1997 Ordinance or otherwise, the City Liability shall be adjusted as follows: the difference between (x) interest accrued hereunder during the Adjustment Period and (y) the amount of interest that would have accrued hereunder during the Adjustment Period at the Applicable Interest Rate shall be added to the City Liability as of the last day of the Adjustment Period.

(b) In the event the Defeasance does not occur on or prior to the Defeasance Date, then, in addition to any rights and remedies the Insurer may have hereunder, or under the 1997 Bonds, the 1997 Ordinance or otherwise, the City Liability shall be adjusted as follows: the difference between (x) interest accrued hereunder from the Effective Date to the Defeasance Date and (y) the amount of interest that would have accrued hereunder from the Effective Date to the Defeasance Date at the Applicable Interest Rate shall be added to the City Liability as of the Defeasance Date.

Section 3.11. Prepayment. The City may prepay any amount outstanding and owed by the City to the Insurer under the Agreement in whole or in part and from time to time on the fifteenth (15<sup>th</sup>) day of any month:

(a) Subject to the limitations in Sections 3.9 and 3.11(b) hereof, and provided that the Defeasance occurs on or prior to the Defeasance Date, prepayment amounts made by the City no later than the Defeasance Date, up to a total of \$4,000,000, shall be multiplied by 1.38 (the "Prepayment Factor") and the result shall be used to



determine the amount by which the interest accrued on the City Liability and the City Liability are reduced.

(b) Notwithstanding anything to the contrary herein, the Prepayment Factor shall not apply to:

(i) Any prepayment made after an aggregate of \$4,000,000 of prepayments have been made hereunder;

(ii) Any prepayment made after the Defeasance Date;

(iii) The Defeasance Prepayment contemplated under Section 3.9 hereof; or

(iv) Any prepayment whatsoever in the event the Defeasance does not occur on or before the Defeasance Date; any prepayment credited based on the application of the Prepayment Factor prior to the Defeasance Date shall be retroactively adjusted to eliminate the application of the Prepayment Factor if Defeasance fails to occur on or before the Defeasance Date. For the avoidance of doubt, in the event Defeasance does not occur on or prior to the Defeasance Date, any interest that did not accrue on the City Liability as a result of the application of the Prepayment Factor prior to the Defeasance Date shall be added to the City Liability as of the Defeasance Date using the methodology of Section 3.10 hereof.

Section 3.12. Transfer by Insurer. Notwithstanding anything to the contrary herein, the Insurer may sell, assign, convey, pledge, lien, or otherwise transfer its rights (but not its obligations) under this Agreement, including, without limitation, its rights to payments and prepayments, without the consent of the City. The City agrees to execute and deliver all documents reasonably requested by the Insurer, including a promissory note reflecting the amounts due from the City hereunder and consistent with the terms hereof and all other documents and applications necessary to obtain any Committee on Uniform Securities Identification Procedures ("CUSIP") numbers, and otherwise cooperate with the Insurer, in each case in order to effectuate the provisions of this Section 3.12.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

Section 4.1. Mutual Representations and Warranties. Each Party makes the following representations, warranties and covenants (on a several basis, with respect to such Party only) to each of the other Parties

(a) Each Party has all requisite power to execute this Agreement and to consummate the transactions contemplated hereby.

(b) Each Party has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery

and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it and (ii) are not in contravention of its organizational documents if any, applicable law, or any agreements specifically applicable to it.

(c) Each person signing this Agreement warrants that he or she is legally competent and authorized to execute this Agreement on behalf of the Party whose name is subscribed at or above such person's signature.

(d) The Parties have not made any statement or representation to each other regarding any facts relied upon by them in entering into this Agreement, and each of them specifically does not rely upon any statement, representation or promise of the other Parties hereto or any other person in entering into this Agreement, except as expressly stated herein. Each Party has relied upon its own investigation and analysis of the facts and not on any statement or representation made by any other party in choosing to enter into this Agreement and the transactions contemplated herein.

(e) The Parties and their respective attorneys have made such investigation of the facts pertaining to this Agreement and all of the matters pertaining thereto as they deem necessary.

Section 4.2. The City's Representations, Warranties, and Covenants.  
The City makes the following representations, warranties and covenants to the Insurer:

(a) The City has the authority, including pursuant to the Municipalities Financial Recovery Act, applicable law, and all relevant judicial proceedings, to enter into this Agreement.

(b) The City has not granted a lien or security interest in, and has not otherwise encumbered, any of its general fund revenues, including its tax revenue. For the avoidance of doubt, obligations issued or guaranteed by the City and backed solely by a pledge of its full faith, credit and taxing power shall not constitute a lien or security interest in, or encumbrance of, the City's general fund revenues, including its tax revenue.

(c) The City's shall perform all disclosure obligations relating to the 1997 Bonds under applicable law and the bond documents, and, for as long as any of the City Liability remains outstanding, provide such disclosure to the Insurer.

**ARTICLE V**  
**[RESERVED]**

**ARTICLE VI**  
**MISCELLANEOUS**

Section 6.1. Amendments. This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party to be affected, by such modification, amendment or supplement.

Section 6.2. Good Faith Negotiations. The Parties recognize and acknowledge that each of the Parties hereto is represented by counsel, and such Party received independent legal advice with respect to the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted regularly and at arm's length; this Agreement is made and executed by and of each Party's own free will; that each knows all of the relevant facts and his or its rights in connection therewith, and that he or it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any party to this Agreement. The Parties further acknowledge that they entered into this Agreement because of their desire to avoid the further expense and inconvenience of litigation and other disputes, and to compromise permanently and settle the claims between the Parties settled by the execution of this Agreement.

Section 6.3. Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns.

Section 6.4. Governing Law; Retention of Jurisdiction; Service of Process. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Pennsylvania, without giving effect to any principles of conflicts of law and applicable federal law. In the event any action, suit or proceeding is commenced pursuant to Section 3.4, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 6.10 hereof, unless another address has been designated by such Party in a notice given to the other Parties in accordance with Section 6.10 hereof.

Section 6.5. Fees and Expenses.

(a) If the Insurer brings an action against the City based on the City's breach of any payment obligations imposed by this Agreement and obtains any monetary recovery, the City shall be liable to the Insurer for all the reasonable expenses incurred by the Insurer in prosecuting such action, including reasonable attorneys' fees and expenses.

(b) Except as provided in Section 6.5(a), if the City or Insurer brings an action against the other Party based upon a breach by the City or Insurer of its obligations under this Agreement, the prevailing Party shall be entitled to all reasonable expenses incurred, including reasonable attorneys' fees and expenses.

Section 6.6. Headings. The headings of the Articles and Sections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the terms or provisions of this Agreement and shall not affect the interpretation hereof.

Section 6.7. Binding Agreement Successors and Assigns; Joint and Several Obligations. This Agreement shall be binding only upon the execution and delivery of this Agreement by the Parties listed on the signature pages hereto. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, assigns, administrators, constituents and representatives. The agreements, representations, covenants and obligations of the Parties under this Agreement are several only and not joint in any respect and none shall be responsible for the performance or breach of this Agreement by another.

Section 6.8. Entire Agreement. This Agreement shall constitute the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Agreement in reliance on any other Party's prior representation, promise or warranty (oral or otherwise) except for those that may be expressly set forth in this Agreement.

Section 6.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

Section 6.10. Notices. All demands, notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when personally delivered by courier service or messenger, (b) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first business day thereafter if transmitted electronically (by e-mail transmission), by facsimile or telecopier, with confirmation of receipt, or (c) three (3) Business Days after being duly deposited in the mail, by certified or registered mail,

postage prepaid-return receipt requested, to the following addresses, or such other addresses as may be furnished hereafter by notice in writing, to the following Parties:

If to the City, to:

City of Harrisburg  
Office of the Mayor  
The Reverend Martin Luther King, Jr. City Government Center  
10 North Second Street, Suite 202  
Harrisburg, Pennsylvania 17107  
Fax: (717) 255-3036

with a copy given in like manner to:

City of Harrisburg, Law Bureau  
ATTN: City Solicitor  
The Reverend Martin Luther King, Jr. City Government Center  
10 North Second Street, Suite 402  
Harrisburg, Pennsylvania 17107  
Fax: (717) 255-3036

If to the Insurer, to:

Ambac Assurance Corporation  
One World Trade Center, 41<sup>st</sup> Floor  
New York, New York 10007  
Attention: Public Finance Surveillance Department and  
General Counsel's Office  
Fax: (212) 208-3384  
Email: [SKsenak@ambac.com](mailto:SKsenak@ambac.com) with copy to [Notices@ambac.com](mailto:Notices@ambac.com)

with a copy given in like manner to:

Arent Fox LLP  
1675 Broadway  
New York, New York 10019  
Attention: Mark A. Angelov, Esq.  
Fax: (212) 484-3990  
Email: [mark.angelov@arentfox.com](mailto:mark.angelov@arentfox.com)

Section 6.11. Successors and Assigns. This Agreement and all of the obligations of the City hereunder shall inure to the benefit of the Insurer and its successors and assigns.

Section 6.12. Further Assurances. Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.


[SIGNATURE PAGES TO FOLLOW]

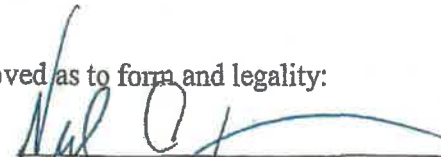
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

CITY OF HARRISBURG, PENNSYLVANIA

By:   
Mayor: Eric Papenfuse

By:   
City Controller: Charlie DeBrunner

By:   
Council President: Wanda Williams

Approved as to form and legality:  
By:   
City Solicitor: Neil A. Grover

AMBAC ASSURANCE CORPORATION, as  
Insurer

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

CITY OF HARRISBURG, PENNSYLVANIA

By: \_\_\_\_\_  
Mayor: Eric Papenfuse

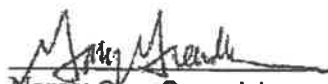
By: \_\_\_\_\_  
City Controller: Charlie DeBrunner

By: \_\_\_\_\_  
Council President: Wanda Williams

Approved as to form and legality:

By: \_\_\_\_\_  
City Solicitor: Neil A. Grover

AMBAC ASSURANCE CORPORATION, as  
Insurer

By:  \_\_\_\_\_  
Name: Gary Greendale  
Title: Managing Director



**Schedule 1**

**Wiring Instructions**

**Bank:** The Bank of New York Mellon

One Wall Street, NY, NY

**ABA#:** 021000018

**Account:** Ambac Assurance Corporation Operating Acct

**Account#:** 4385818400

**Reference:** Harrisburg GO 1997 Series D and F

**Policy#:** 14431BE

**Attention:** Joseph Sievers (212) 208-3277

# EXHIBIT B

**PROPOSED 2022 PREPAYMENT OF CITY LIABILITY UNDER  
THIRD AMENDED AND RESTATED SETTLEMENT AGREEMENT  
WITH AMBAC ASSURANCE CORPORATION**

A	B	C	D	E	F	G	H	I	K	L
1	CITY OF HARRISBURG									
2	Third Proposed 2022 Budget Adjustment and/or Budget Reallocation									
3	General Fund and Debt Service Fund									
4										
5										
6										
7										
8	<b>Budget Unit and</b>			<b>Adopted</b>	<b>YTD</b>	<b>Available</b>		<b>Adjusted</b>		
9	<b>Expenditure/Revenue Account</b>	<b>Budget Unit Description</b>	<b>Account Description</b>	<b>Current</b>	<b>Expenditures/</b>	<b>Budget</b>	<b>Proposed</b>	<b>Budget After</b>		
10				<b>2022</b>	<b>Revenue thru</b>	<b>Balance at</b>	<b>Budget</b>	<b>Approved</b>		
11				<b>Budget</b>	<b>10/25/2022</b>	<b>10/25/2022</b>	<b>Amendment</b>	<b>Amendment</b>		
12	General Fund:									
13	01000100-399099	General Revenue	Estimated Cash Carryover (or Fund Balance)	-	-	-	20,234,702	20,234,702		
14										
15										
16	01010189-481007	Transfers	Interfund Transfer - Debt Service Fund	10,073,638	9,977,103	96,535	20,234,702	20,331,237		
17										
18										
19										
20										
21	Debt Service Fund:									
22										
23	07700700-398001	Debt Service Revenue	Interfund Transfer - General Fund	10,073,638	9,977,103	96,535	20,234,702	20,331,237		
24										
25										
26	07700797-447030	GO Debt Series D and F of 1997	Interest Payment	39,430	39,430	-	9,290,282	9,290,282		
27	07700797-448030	GO Debt Series D and F of 1997	Principal Payment	8,698,068	8,698,068	-	10,944,420	10,944,420		
28				8,737,498	8,737,498	-	20,234,702	20,234,702		
29										
30										
31										
32										
33	Footnotes									
34	Proposed budget adjustment to accommodate the full payoff of the AMBAC bond insurance forbearance liability.									
35										