RESOLUTION NO. 6-2013
Adopted March 19, 2013

APPROVING AN AGREEMENT WITH THE CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO TO PROVIDE LEGAL SERVICES TO THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE AND AUTHORIZING THE EXECUTIVE DIRECTOR TO RETAIN COUNSEL FOR PARTICULAR MATTERS

WHEREAS, Prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco ("Redevelopment Agency"), as a local governmental entity separate from the City and County of San Francisco ("City"), had in-house counsel to address its needs for legal representation and services, but the Redevelopment Agency also retained the City Attorney on a case-by-case basis for particular matters involving specialized areas of the law or major projects under the direction of the Mayor’s Office; and

WHEREAS, the City Charter requires the City Attorney to represent all of the City’s boards, commission, departments, officers and employees, in all legal matters and proceedings affecting the City; and

WHEREAS, in 2004, the Redevelopment Agency and the City Attorney entered into a Memorandum of Understanding for the Provision of Legal Counsel Services that established a process for retaining the City Attorney on particular matters and provided standards for addressing potential conflicts of interest where the City Attorney concurrently or jointly represented the City and the Redevelopment Agency ("2004 MOU"); and

WHEREAS, state law dissolved redevelopment agencies on February 1, 2012 and established that the cities or counties that originally created redevelopment agencies were successor agencies and that, as a result of this succession, the City Attorney was required under the City Charter to represent the successor agency because it was part of the City’s organizational structure; and

WHEREAS, subsequent amendments to state law established that successor agencies are legally separate from the cities or counties that originally created redevelopment agencies and that successor agencies can sue and be sued; and

WHEREAS, the City has implemented state law by enacting Ordinance No. 215-12 (Oct. 4, 2012), which authorized, among other things, the Successor
Agency to retain, as it deems appropriate, the City Attorney for legal advice and representation; and

WHEREAS, the Office of Community Investment and Infrastructure, as the Successor Agency to the Redevelopment Agency, ("OCII" or "Successor Agency") wishes to build upon the successful and productive relationship that developed between the City Attorney and Redevelopment Agency under the 2004 MOU and that has continued since dissolution of the Redevelopment Agency; and

WHEREAS, OCII staff and the City Attorney's office have drafted an Agreement for Providing Legal Counsel between the City Attorney and the Successor Agency that is based on the 2004 MOU and requires that OCII request legal services for a particular project, transaction, case or other activity, that OCII and the City Attorney negotiate and specify a scope of service and budget for the particular legal services, and that billing for the services be submitted and paid in a timely manner ("Agreement"); and

WHEREAS, a potential for a conflict of interest arises when the City Attorney represents OCII because the City Attorney has a duty under the City Charter to represent the City and County of San Francisco ("City") and OCII is a legally separate entity that can sue and be sued; and

WHEREAS, the circumstances in which the interests of OCII and the City are actually adverse are likely to be very rare, but the Agreement provides a preliminary identification of potential conflicts of interest that may arise in the future and a process for identifying these conflicts when OCII requests City Attorney representation in a particular matter; and

WHEREAS, the Agreement provides that the City Attorney will not represent OCII when an actual conflict arises and that OCII is free to hire substitute counsel of its own choosing; and

WHEREAS, OCII has the authority to retain counsel other than the City Attorney, as it deems appropriate. NOW THEREFORE BE IT

RESOLVED, by the Office of Community Investment and Infrastructure ("OCII") that the Executive Director is authorized to execute the Agreement for Providing Legal Counsel between the City Attorney and the Successor Agency ("Agreement"), substantially in the form that is attached to this Resolution as Exhibit A, to provide legal advice and representation on any matter affecting OCII; and BE IT FURTHER

RESOLVED, that the Executive Director is authorized to retain, under the Agreement, the City Attorney for particular legal matters after determining the scope of services, budget, and the potential for conflicts of interest; and BE IT FURTHER
RESOLVED, that the Executive Director is authorized to retain legal counsel other than the City Attorney in the event that the Executive Director identifies potential or actual conflicts of interest with the City Attorney’s representation of OCII and those conflicts warrant the use of other legal counsel.

Exhibit A: Agreement for providing legal counsel services between the City Attorney for the City and County of San Francisco, and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of March 19, 2013.

Natashe Jones
Commission Secretary