RESOLUTION APPROVING FINDINGS, AUTHORIZING IMPLEMENTATION OF THE CITY COUNCIL'S STRATEGIC INITIATIVES FOR DOWNTOWN REDEVELOPMENT, AND APPROVING A PROFESSIONAL ADVISORY SERVICES CONTRACT WITH THE URBAN LAND INSTITUTE FOR PROFESSIONAL ADVISORY SERVICES

The City Council has adopted goals for Fiscal Year 2011-2012, one of which is Economic Development - Facilitate Investment and Job Creation; and

One of the adopted Business Plans (Strategic Initiatives) is the Downtown Revitalization Plan; and

Stockton Municipal Code (SMC) section 3.68.070 provides for an exception to the competitive bidding process for professional services. The findings as presented support and justify exceptions to the bidding process; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. Pursuant to the requirements of SMC section 3.68.070, the City Council approves the following findings to support authorization of a Professional Advisory Services Contract with the Urban Land Institute:

   - There is an immediate need to undertake the comprehensive analysis to facilitate the City of Stockton's competitive position and encourage private sector investment.

   - The City of Stockton's current economic position reinforces the need for a more competitive environment. The current 19.3% (August 2011) unemployment rate, declining property values, and need for job development necessitate immediate action.

   - The Urban Land Institute is the only organization with the diversity, applied knowledge, and experience that can do this type of comprehensive study.

2. The services provided by the Urban Land Institute are consistent with the City Council's adopted Goals and Business Plan and it possesses the capability to address the required actions.

3. The Professional Advisory Services Contract between the City of Stockton and Urban Land Institute, in an amount not to exceed $120,000, is approved and the
City Manager is authorized to execute it on behalf of the City of Stockton, a copy of which is attached hereto as Exhibit 1 and incorporated by this reference.

4. The City Manager is authorized and directed to take such other actions as are appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED _______December 13, 2011_______.

[Signature]
ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

[Signature]
BONNIE PAIGE, City Clerk
of the City of Stockton
PROFESSIONAL ADVISORY SERVICES CONTRACT
BETWEEN THE CITY OF STOCKTON AND
ULI-THE URBAN LAND INSTITUTE

THIS CONTRACT constitutes a binding contract between the CITY OF STOCKTON, a municipal corporation, hereinafter referred to as “CITY” and ULI-the Urban Land Institute (Institute or ULI), hereinafter referred to as “ULI”. As part of its purpose, the ULI maintains an Advisory Services Department for the purpose of benefiting the general public through improved planning and utilization of urban land.

WITNESSETH:

WHEREAS, ULI submitted a proposal, is licensed in the State of California to perform such services, and is capable of provide such services;

NOW, THEREFORE, CITY and ULI, for the consideration and upon the terms and conditions hereinafter specified agrees as follows:

Section 1
SCOPE OF SERVICES

Pursuant to this Agreement, the ULI agrees:

1. To perform an analysis to identify strategies for revitalizing downtown with a specific emphasis on private sector investment requiring public-private partnership.

2. To assist in the San Joaquin Regional Rail Commission and the San Joaquin Council of Governments in the development of a planning document that focus’s on how best to plan and position the neighborhood around the Cabral Rail Station for Transit Oriented Development as well as related improvements in anticipation of High Speed Rail and their linkage to the downtown regulatory constraints.

3. To analyze the adaptive re-use potential of existing properties, identify key economic and management issues relating to land use projects, and assess overall development strategies and policies.

4. To provide a panel composed of members of the Urban Land Institute who collectively have a varied and broad experience and knowledge applicable to the particular problems to be considered.
5. To arrange for the panel members to visit the location upon which its recommendations are sought for a period of not less than five days, starting on February 5, 2012 and ending on February 10, 2012. During that time the panel, directly and through its staff, will study the designated area; consult with public and private officials, representatives of other relevant organizations, and other individuals familiar with the problems involved; and prepare its conclusions and recommendations which will be presented to the CITY and its invited guests in oral form at the close of the on-site assignment.

6. To arrange, insofar as possible, to have appropriate persons, including public and private officials, representatives of the relevant organizations, and others, available for the purpose of consulting with and furnishing information to the panel on specific matters relevant to the assignment as may be necessary and advisable during the period of the panel's visit.

7. To provide the CITY with a full-color written summary of its conclusions and recommendations and actionable steps, illustrated with photographs and drawings, as appropriate. The CITY will be provided 200 copies of the report.

Section 2

COMPENSATION

The ULI agrees to:

1. At its expense to absorb the travel and living expenses of its panel and staff while on site.

The CITY agrees to:

1. To furnish the each panel member, not less than 10 days in advance of the panel meeting, such pertinent background data in the form of reports, plans, charts, etc., as may be presently available or readily developed for the preliminary study of the panel, prior to its inspection on site. Two copies are to be sent to the ULI Project Manager.

2. In return for the advice and recommendations of the ULI, CITY is to pay the ULI the total sum of ONE HUNDRED AND TWENTY THOUSAND DOLLARS ($120,000). The first installation of SIXTY THOUSAND ($60,000) will be paid upon signing of this Contract. The second installment of FIFTY-FIVE THOUSAND ($55,000) will be paid upon presentation of the panel’s recommendations. The third and final payment of FIVE THOUSAND ($5,000) will be paid when the CITY receives the final report. In the event the CITY cancels the panel assignment, the initial
payment is non-refundable and CITY shall be responsible for any additional costs incurred by ULI up to the date of cancellation.

3. It is understood that the fee paid by the CITY to the ULI is to be used to cover the costs of the panel assignment and to support and encourage the ULI's scientific and educational programs.

4. The CITY may make such noncommercial use of the report as it may deem desirable. It is further understood that the ULI may make such noncommercial use of the report prepared of the panel's findings and recommendations as it may deem desirable, and the CITY herewith specifically agrees that the ULI may publish and disseminate such report or any part thereof in conjunction with its research and educational programs.

Section 3
TERM

The term of this Contract shall be from the date of execution until actual completion and delivery of the agreed upon Scope of Services as described in the above Section 1.

Section 4
RIGHTS AND DUTIES OF CITY

CITY shall make available to ULI all data and information in the possession of CITY which both parties deem necessary to complete the Project, and CITY shall actively aid and assist ULI in obtaining such information as may be deemed necessary from other agencies and individuals.

The Deputy City Manager that provides oversight to the Economic Development Department may authorize a staff person, as a representative, to confer with ULI relative to ULI's services hereunder. The Project hereunder shall be reviewed from time to time by CITY at the discretion of CITY or upon the request of ULI. If the services are satisfactory, they will be approved. If the services are not satisfactory, CITY will inform ULI in writing of the changes or revisions necessary to secure approval.

The Deputy City Manager, on behalf of CITY, reserves the right to approve any change in the project manager assigned by ULI to said Project, and any discretion or right to approve exercised by or on behalf of CITY shall be exercised in a reasonable manner.

Upon payment for the services performed, all work product, or other instruments of service are and shall remain the property of CITY whether the
entire project for which they are made is finished or not. ULI shall be permitted to retain copies for purposes of marketing professional services, publications in professional journals, and presentations.

Section 5
RIGHTS AND DUTIES OF ULI

ULI represents and acknowledges that it has or will have at the time this Contract is executed, all licenses (including a City of Stockton Business License), permits, qualifications, insurance, and approvals of whatsoever nature are legally required for the ULI to practice its profession, and that ULI shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals.

ULI shall meet with the Deputy City Manager or other personnel of CITY or third parties as necessary on all matters connected with the carrying out of ULI’s services. Such meetings shall be held at the request of either party hereto.

Section 6
TERMINATION OF CONTRACT

Either party shall have the right to terminate this Contract at any time upon giving the other party written notice of its intention to terminate thirty (30) days prior to the effective date of said termination. Upon termination, ULI shall turn over to CITY all documents, records, plans, and instruments of service produced by ULI in connection with its performance of services pursuant to this Contract. CITY shall pay ULI for all services satisfactorily performed pursuant to this Contract up to the date of termination.

Section 7
NOTICES

Any notice, tender, delivery, or requests for payment to be given to any party herein in connection with this Contract may be effected by personal delivery, in writing or by mail, and shall be deemed communicated as of the date of actual receipt. Mailed notices shall be addressed as set forth below:

To CITY: Michael E. Locke
Deputy City Manager
City of Stockton
425 N. El Dorado Street.
Stockton, CA 95202
To ULI:

Patrick Phillips  
Chief Executive Officer  
1025 Thomas Jefferson Street, N.W.  
Suite 500 West  
Washington, D.C. 20007-5201

Section 8

INDEPENDENT CONTRACTOR

Nothing in this Contract shall be interpreted so as to cause ULI to be considered an employee of CITY. ULI is employed solely as an independent contractor to render a professional service and is responsible for all obligations consistent with that status.

The persons engaged in the services will be considered employees of the ULI. ULI shall be responsible for the services of Subcontractors, which shall be subject to the provisions of this Contract. ULI is responsible to the CITY for the acts and omissions of its Subcontractors and persons directly or indirectly employed by them.

Section 9

WORKERS’ COMPENSATION

In accordance with the provisions of Section 3700 of the California Labor Code, ULI shall secure at its own expense and maintain during the life of this Contract, workers' compensation coverage for its employees as necessary to protect ULI and its employees under the Workers' Compensation Insurance and Safety Act. Such insurance shall be in a standard form and shall relieve CITY of all responsibility for such claims and/or liability. ULI shall, prior to undertaking the work contemplated herein, supply CITY with a certificate of insurance evidencing that said coverages are in full effect.

Section 10

INSURANCE

ULI shall at all times maintain at ULI's expense professional liability insurance coverage in the amount of $1 million. ULI shall provide thirty (30) days written notice to CITY prior to canceling or changing the terms of such coverage.

In addition to Workers' Compensation Insurance and Professional Liability Insurance, ULI shall comply with the insurance requirements set forth in Exhibit A, which is attached to this Contract and incorporated by this reference.
Section 11
INDEMNIFICATION

ULI shall indemnify, defend, and hold harmless CITY, its officers, agents, and employees, from any claim, expense, liability, or payment for any injury or damage to any person or property to the extent caused by ULI's willful misconduct or negligent performance of its duties pursuant to this Contract.

ULI is acting in the capacity of an independent contractor hereunder and not as an employee, or agent of, or joint venturer with CITY.

The performance of this Agreement by either party is subject to acts of God, war or threat of war, government regulation, acts of terrorism, disaster, fire, strikes, civil disorder, public health crises, curtailment of transportation facilities or other circumstance beyond the control of the parties unreasonably delaying or making it inadvisable, illegal or impossible for either party to perform its obligations hereunder. This Agreement may be terminated without penalty for any one (1) or more of such reasons by written notice from one party to the other; provided that the party delayed or unable to perform shall promptly advise the other party of such delay or impossibility of performance, and provided further that the party so delayed or unable to perform shall take reasonable steps to mitigate the effects of any such delay or nonperformance.

Section 12
ATTORNEY'S FEES

Any claims, disputes or controversies arising out of, or in relation to, the interpretation, application or enforcement of this Contract may be submitted to non-binding mediation through the auspices of the American Arbitration Association prior to the initiation of any suit or other litigation. The cost of said mediation shall be split equally between the parties.

In the event that legal action is brought by either party against the other, the prevailing party shall be reimbursed by the other for the prevailing party's legal costs, in addition to whatever other judgments or settlement sums, if any, may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, expert witness fees and other documented expenses.

Section 13
NON-DISCRIMINATION

In performing services under this Contract, ULI shall not discriminate in the employment of its employees or in the engagement of any Subcontractors on
the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 14
ASSIGNMENT

ULI shall neither assign nor delegate its rights and/or duties under this Contract without first obtaining CITY's written consent to the assignment and/or delegation. Any such assignment or delegation made by ULI without prior written consent of CITY will render this Contract voidable at sole discretion of CITY.

Section 15
AUDITS

CITY reserves the right to periodically audit all charges made by ULI to CITY for services under the Contract. Upon request, ULI agrees to furnish CITY, or a designated representative, with necessary information and assistance.

ULI agrees that CITY or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. ULI agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Contract. ULI further agrees to maintain such records for a period of three (3) years after final payment under this Contract.

Section 16
APPLICABLE LAW

The provisions of this Contract and any and all disputes arising therefrom shall be governed by the laws of the State of California.

Section 17
CAPTIONS

The captions of the sections of this Contract are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.
Section 18
INTEGRATION AND MODIFICATION

The response by ULI to the Request for Proposals and the Request for Proposals on file with the City Clerk are hereby incorporated herein by reference to the extent that such documents do not differ from the provisions and terms of this Contract, and if a difference does exist the provisions and terms of this Contract shall supersede such response or Request for Proposals.

This Contract represents the entire integrated agreement between ULI and CITY, supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties, and may be amended only by written instrument signed by ULI and CITY.

All exhibits and this Contract are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Contract and the attached exhibits, the terms of this Contract shall prevail.

Section 19
SEVERABILITY

The provisions of this Contract are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

Section 20
THIRD PARTY RIGHTS

Nothing in this Contract shall be construed to give any rights or benefits to anyone other than CITY and ULI.

Section 21
AUTHORITY

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.

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IN WITNESS WHEREOF, the parties have executed this Contract the day and year first hereinabove written.

ATTEST:

____________________________________
BONNIE PAIGE
City Clerk of the City of Stockton

APPROVED AS TO FORM:
JOHN LUEBERKE
CITY ATTORNEY

BY: ____________________________
Deputy City Attorney

CITY OF STOCKTON, a Municipal Corporation

BY: ____________________________
BOB DEIS
City Manager

"ULI"

ULI-the Urban Land Institute

BY: ____________________________
PATRICK PHILLIPS
Chief Executive Officer

BY: ____________________________
GALYE BERENS
SENIOR VICE PRESIDENT
Education and Advisory Group

BY: ____________________________
TOM EITLER
VICE PRESIDENT
Advisory Services