

DRAFT

SERVICES AGREEMENT

I.

This Agreement sets forth the proposed terms, and if accepted by the **City of College Station, a home-rule municipal corporation organized under the laws of Texas** (hereinafter referred to as "Client") as provided below, will constitute our Agreement regarding the objectives and terms of the Client's engagement of **Dean International, Inc., a Texas Corporation** (hereinafter referred to as "Firm"), an independent consultant to perform the following services, and Client's obligation to pay Firm for said services rendered and expenses incurred on Client's behalf:

1. **Intergovernmental Relations** - The Firm will work with the Council and City staff to create a proactive public policy strategy that will place the City of College Station at the forefront of transportation public policy development at the regional, state, and national levels. The Firm will assist in developing and strengthening positive working relationships with officials and decision-makers at all levels of government. The Firm will assist the City of College Station in planning and executing annual strategic missions to Austin and Washington, D.C. to petition executive and legislative branch leaders for assistance in meeting the city's transportation related goals and objectives.

2. **Brazos Valley Transportation Summit** - The Firm will take the lead in assisting the City of College Station in the planning, development and implementation of a two-day multi-modal regional transportation summit for the purpose of bringing together municipalities, counties, private/public entities, institutions of higher education, regional, state and federal officials and individuals within the State and region to discuss and address the multi-modal transportation needs of the Brazos Valley, now and into the future. The Firm will, in collaboration with the City of College Station, develop the agenda, secure speakers, encourage attendance, arrange for co-hosts and event sponsors and assist in securing financial support for the City's efforts. The Firm will endeavor to make this an annual event of excellence and one that receives the wide spread support and endorsement of opinion makers and public service leaders throughout the transportation industry and related fields of interest.

3. **Surface Transportation Projects** - The Firm will facilitate and assist in identifying all potential funding sources (i.e., local, regional, state, federal, and private sector) to implement the City's priority surface transportation projects. After potential funding sources have been identified, the Firm will assist the City in securing funds to implement specific projects. The City Council will identify for Dean International, Inc. no more than three clearly defined high priority transportation projects to pursue for funding. These three projects will be in addition to the two projects previously identified for federal "earmarking" during the reauthorization of the surface transportation bill. The City may substitute other transportation projects for its high priority projects list based on new priorities and mutual consent as determined by the City Council and agreed upon by the Firm.

4. **Additional Support** - As the City of College Station further progresses with plans to build a City Center and to plan its floodplain management and development of its hike and bike trails within its park system, it is important to recognize that the Firm has extensive expertise to assist the City Management and Staff. Dean International staff can assist with channel and lake design to reduce siltation, lake operation and management ideas, low cost lake maintenance landscaping, planning of trail systems, as well as planning for floodplain mitigation by developers that would save the City money while beautifying and preserving a valuable City asset. Additionally, the City Council Transportation Committee and the Management have identified the need to review the City's Comprehensive Plan and the Master Transportation Plan to determine if changes need to be made to address the changing environment regarding transportation. The Firm, in cooperation with the Management and Staff, can assist in that review and make recommendations regarding transportation planning and prioritization.

5. **Publication of Student Papers** – The Firm will work in conjunction with the City, as well as the Texas Transportation Institute, in an effort to enhance the visibility of student work and City developments by attempting to publish student papers in a widely circulated transportation journal.

6. Any other services mutually agreed upon by Client and Firm in writing subject to the limitations set out in Section II, paragraph 3 herein below.

II.

In return for such services, Client agrees to pay the Firm as follows:

For services outlined in Parts 1 - 5 above, a nine-month fee (April 1, 2005 – December 31, 2005) in the amount of One Hundred Eighty Thousand Dollars (\$180,000.00), plus expenses incurred to carry out the services performed. Payments will be made monthly in the amount of Twenty Thousand Dollars (\$20,000.00) (hereinafter referred to as "Monthly Fee") initially, on the execution of the Agreement by Client and Firm, and subsequently on the first day of each month thereafter for nine months, constituting the nine consecutive monthly payments (the "Engagement Term").

At the end of the Engagement Term or Renewal Engagement Term (defined below), if any thereafter, this Services Agreement may be renewed for a period of twelve (12) consecutive months ("Renewal Engagement Term") by means of a written agreement executed by both Client and the Firm at least sixty (60) days prior to termination of the Engagement Term.

In the event of withdrawal by Client during the Engagement Term or any Renewal Engagement Term, Client shall immediately pay to the Firm the remainder of the Monthly Fees due for the balance of the Engagement Term or Renewal Engagement Term plus any actual expenses reasonably incurred to carry out the services performed for Client.

For services outlined in Section I, Part 6 above, which must be initiated by the Client and agreed to in writing by both the Client and the Firm, a fee based on Firm's billing rates and charges for personnel of the Firm, plus expenses incurred in performing the services shall be specified in writing pursuant to Section VII. Firm shall bill Client monthly according to an agreed upon, written billing schedule for services rendered, based on Firm's hourly billing rates. Client understands that said billing rates at the time of entering into this Agreement range from \$200.00 to \$450.00 per hour for senior consultants and from \$125.00 to \$250.00 per hour for associate public policy consultants and administrative assistants. Client agrees to pay said fees and expenses promptly, and in no event later than 20 days after statement from Firm is received by Client except items for which Client has requested additional information which will be paid within twenty days after Client has received the information requested from the Firm. Furthermore, for services outlined in Section I, Part 6 above, Client may make any deductions from the billing concerning services that have not been specifically requested or approved by the City Manager if less than \$25,000.00, or the College Station City Council if greater than \$25,000.00, or expenses that do not detail that they are actual expenditures or unreasonable and shall not be considered a breach of this agreement.

III.

For purposes of this agreement expenses shall mean all detailed actual expenses reasonably incurred in performing the services in Section I, Nos. 1-5 and any additional services in No. 6 duly authorized as provided in Section II, paragraph 4, travel expenses, photocopying, printing, car expenses, postage, long distance calls and telephone charges, binding costs, courier and special delivery services, word processing costs, and other actual de minimus out-of-pocket expenses reasonably incurred with such matters. The Firm agrees to provide Client with an itemized listing by subject matter for expenses incurred during each billing period. City may request Firm provide all back-up receipts and information to substantiate said expenditures. In no event shall the total amount of expenses in items 1-5 in Section I exceed 15% of the agreed upon fee or \$27,000.00 for the nine-month period without written authorization from Client.

IV.

The Firm shall render a statement to Client on or before the tenth (10th) day of each month itemizing services performed and expenses incurred during the prior thirty (30) day period. Client agrees that payment of expenses will occur promptly, and in no event later than twenty (20) days after statement from Firm is received by Client except items for which Client has requested additional information which shall be paid within twenty (20) days after additional information has been received and any billing adjustments have been made by Firm. Client agrees to review expenses upon receipt and to communicate with Firm if additional information is necessary for its review. Firm, upon Client's request, shall promptly forward this information.

V.

Except where bills have not been paid because additional information has been requested or erroneous billing, Client agrees that the Firm upon notice of non-payment and opportunity by Client to remit payment for overdue bill within ten (10) days of receipt of notice, shall be entitled to withdraw from the engagement upon failure of Client to make timely payments as required by this Services Agreement. Client shall be entitled to terminate and withdraw from this agreement for any reason upon ten (10) days written notice by Client to the Firm. In the event of withdrawal by Client, Client shall promptly pay to the Firm all outstanding fees and expenses and comply with the fees and provisions of part II above.

In the event of withdrawal by Firm for failure of Client to make timely payments as required in paragraph V., Client shall promptly pay to the Firm all outstanding fees and expenses, plus any expenses incurred less deductions made by Client authorized under this agreement (as defined in Part III above) and comply with the terms and provisions of Part II above.

VI.

Client recognizes that nothing in this Services Agreement and nothing in Firm's statements to Client will be construed as a promise or a guarantee concerning the outcome of Client's matter. Firm makes no such promises or guarantees but does warrant and represent that it will use its best efforts and exercise due diligence in the pursuit of Client's services specified herein in providing the services specified herein. Firm's comments about the outcome of Client's matters represent an expression of opinion only based on its experience and expertise in the providing of such services.

VII.

Client recognizes that Firm's entitlement to payment of fees and expenses is not contingent upon the results obtained or the final disposition of the services for which Firm has been retained.

VIII.

Client recognizes that the working papers assembled and accumulated by Firm in connection with this representation belong to and remain the property of Firm. Client has access to and may obtain copies of Firm's working papers promptly as necessary for its use and nothing in this agreement shall limit the Client's right to obtain or reuse said materials by its officers, agents, or consultants.

IX.

Client and Firm may amend or modify this Services Agreement at any time so long as such amendment or modification is reduced to writing and is mutually agreed upon by Client and Firm and is approved by the City of College Station City Council.

X.

Assignment

During the term of this Agreement, Firm may not assign this Agreement without the consent of Client.

XI.

Invalidity

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

XII.

Written Notice

All notices required by this Agreement (1) shall be in writing, (ii) shall be addressed to the parties as set forth below unless notified in writing of a change in address. The address of the parties is as follows:

To Client: City of College Station
P.O. Box 9960
College Station, Texas 77842
Attn: Mayor Ron Silvia

To Firm: Dean International, Inc.
8080 Park Lane, Suite 600
Dallas, Texas 75231
Attn: David A. Dean

XIII.

Entire Agreement

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the Client, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

XIV.

Texas Law

This Agreement has been made under and shall be governed by the laws of the State of Texas.

XV.

Place of Employment

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

XVI.

Authority to Contract

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

XVII.

Waiver

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

DEAN INTERNATIONAL, INC.

CITY OF COLLEGE STATION

BY: _____
David A. Dean
President/CEO

BY: _____
Ron Silvia, Mayor

ATTEST:

City Secretary

APPROVED:

Thomas E. Brymer, City Manager
Date: _____

Charles Cryan, Director of Fiscal Services
Date: _____

City Attorney
Date: _____

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, on this day personally appeared Ron Silvia, as Mayor of the CITY OF COLLEGE STATION, a Texas home-rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____, 2005.

Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, on this day personally appeared DAVID A. DEAN, as President / CEO of DEAN INTERNATIONAL, INC., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____, 2005.

Notary Public in and for the State of Texas

ACCEPTED this ____ day of _____, 2005. UPON EXECUTION THIS AGREEMENT BECOMES EFFECTIVE April 1, 2005.