

## SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") dated this 1<sup>st</sup> day of April, 2014, is made by and among the **Town of Mansfield**, a municipal corporation organized under the laws of the State of Connecticut, and having an address of Audrey P. Beck Municipal Building, 4 South Eagleville Road, Mansfield, Connecticut 06268-2599 ("Mansfield"), **Desman, Inc.**, a Delaware corporation dba **Desman Associates**, having an address of 55 Capital Boulevard, 4<sup>th</sup> Floor, Rocky Hill, Connecticut 06067 ("Desman") and **Day Pitney LLP**, 242 Trumbull Street, Hartford, Connecticut 06103 ("Escrow Agent"). Mansfield and Desman shall collectively be referred to as the Parties.

WHEREAS, pursuant to the terms and provisions of that certain AIA Document B151-1997 Abbreviated Standard Form of Agreement Between Owner and Architect between Mansfield, as Owner, and Desman, as Architect, signed December 17, 2010 by Mansfield and signed December 21, 2012 by Desman (the "Contract"), Desman provided certain architectural and engineering services related to Parking Garage #1 (the "Project") to serve the Phase I development of the Storrs Center project in Mansfield, CT and Mansfield agreed to compensate Desman for those services;

WHEREAS, during the course of the design and construction of the Project, the overall cost of the design and construction of the Project incurred by Mansfield increased from the Project's original estimate due to a variety of factors;

WHEREAS, Mansfield contends that a portion of the increase in the overall cost of the design and construction of the Project incurred by Mansfield is attributable to the acts and/or omissions of Desman and/or its consultants and agents as fully set forth in Exhibit A, attached hereto, entitled "Mansfield Parking Garage Cost Overruns," (the "Mansfield Compensation Claim");

WHEREAS, Desman denies Mansfield's allegations that it is responsible for the Mansfield Compensation Claim and also contends that a number of Mansfield's allegations constitute betterment, are barred by the terms of the Contract (e.g. consequential damages), and/or were caused by the acts and/or omissions of Mansfield and its other contractors, consultants, engineers, and testing agencies;

WHEREAS, Desman contends that Mansfield owes Desman a final balance of \$244,700 in fees, costs and expenses, plus interest, with respect to the Project above and beyond what has been paid by Mansfield to Desman to date, consisting of an outstanding balance of \$148,600 under invoices previously submitted under the Contract, \$26,600 due from not yet submitted invoices (for work included in the Contract) and \$69,500 for additional engineering services (above the scope of the original Contract), none of which have yet been approved or authorized by Mansfield although Desman contends that such sums are due and owing under the Contract (collectively, the "Desman Compensation Claim");

WHEREAS, Mansfield denies that it owes such fees, plus interest, to Desman;

WHEREAS, the Contract requires that the Parties mediate all disputes and, if not successful in mediation, the Contract requires the Parties to arbitrate any remaining disputes;

WHEREAS, each of the Parties desires to avoid the time, uncertainty and likely significant expense of participating in the above referenced dispute resolution procedures;

WHEREAS, the Parties now desire to resolve and settle the Mansfield Compensation Claim and the Desman Compensation Claim; and,

WHEREAS, these recitals are not merely recitals but are material terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises as set forth herein, as well as for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Within ten (10) business days after the execution by all parties of this Agreement and the delivery of executed W-9 forms for each of the Parties and the Escrow Agent to each other, the Parties shall deliver or cause to be delivered the following funds (collectively, the "Settlement Funds") and documents to Escrow Agent, to be held in escrow and disbursed by Escrow Agent in accordance with the terms of this Agreement:

- (a) Mansfield shall deliver to the Escrow Agent four counterpart originals of this Agreement, duly executed, witnessed and acknowledged by Mansfield;
- (b) Desman shall deliver to the Escrow Agent four counterpart originals of this Agreement, duly executed, witnessed and acknowledged by Desman;
- (c) Mansfield shall deliver to the Escrow Agent cash in the amount of One Hundred Forty-Five Thousand and No/100 Dollars (\$145,000.00) by wire transfer to the account referenced on Exhibit B attached hereto ("Escrow Agent's Account"); and
- (d) Desman and/or its insurance carrier shall deliver or cause to be delivered to the Escrow Agent cash in the total amount of Two Hundred Fifteen Thousand and No/100 Dollars (\$215,000.00) by wire transfer to Escrow Agent's Account.

No interest shall be payable to any Party on the Settlement Funds.

2. Upon the Escrow Agent's receipt of the Settlement Funds and four fully executed counterpart originals of this Agreement from each party, the Escrow Agent shall disburse and release the Settlement Funds as follows:

- (a) Escrow Agent shall wire transfer cash in the amount of Two Hundred Fifteen Thousand and No/100 Dollars to Mansfield in accordance with the wire transfer instructions set forth on Exhibit C attached hereto, and deliver to Mansfield one fully executed original of this Agreement; and
- (b) Escrow Agent shall wire transfer cash in the amount of One Hundred Forty-Five Thousand and No/100 Dollars (the "Mansfield Payment") to Desman in accordance with the wire transfer instructions set forth on Exhibit D attached hereto, and deliver to Donald W. Doeg, Esq., Updike, Kelly & Spellacy, P.C., 100 Pearl Street, Hartford, Connecticut 06123-1277, two fully executed originals of this Agreement.

3. Desman, at its sole cost and expense, shall be responsible to resolve any open invoices and any subsequent claims, if any, by its consultants, agents or subcontractors made against Mansfield or the Project for the payment of any fees, costs and expenses related to the Project. Desman, in consideration of the Mansfield Payment, hereby agrees to indemnify and hold Mansfield harmless from and against any and all claims, demands, assertions, lawsuits, costs, expenses, losses and liabilities asserted by its consultants, agents, subcontractors or any other entity against or incurred by Mansfield (including, without limitation, reasonable attorneys' fees and costs) arising out of, attributable to, resulting from or related to Desman's obligations under the Contract.

4. In consideration of the payment to be made by Desman in accordance with Section 1(b) above, the contemporaneous release by Desman set forth in Section 5 below, the performance of Desman's obligations under Section 3 above, and other good and valuable consideration, Mansfield does hereby remise, release and discharge Desman, its owners, principals, partners, shareholders, directors, employees, officers, agents, attorneys, consultants and its successors in interest, of and from all manner of action and actions, cause and causes of action, suits, grievances, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, extents, executions, claims, liens and demands whatsoever at law or in equity, which Mansfield had, has or will in the future have arising out of any of the claims, facts, allegations and circumstances which are the subject of the Mansfield Compensation Claim.

5. In consideration of the payment to be made by Mansfield in accordance with Section 1(a) above, the contemporaneous release by Mansfield set forth in Section 4 above, and other good and valuable consideration, Desman does hereby remise, release and discharge Mansfield, and any and all of its agents, servants, officers, representatives, attorneys, successors, assigns, departments, divisions, officials and employees, of and from all manner of action and actions, cause and causes of action, suits, grievances, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, extents, executions, claims, liens and demands whatsoever at law or in equity, which Desman had, has or in the future will have arising out of any of the claims, facts, allegations and circumstances which are the subject of the Desman Compensation Claim.

6. This Agreement shall not create any rights in favor of any third persons or entities including, but not limited to, any contractors who performed work on the Project or suppliers or materialmen who furnished materials to the Project.

7. The Parties understand and acknowledge that this Agreement and the performance of the Parties' respective obligations hereunder is part of a compromise, and neither this Agreement nor such performance does or shall constitute any admission of liability or responsibility on the part of the Parties to this Agreement.

8. The Parties expressly acknowledge that they have had the opportunity to consult with counsel in connection with the execution of this Agreement; the Parties have not been induced by any representations by the other Parties or others to enter into this Agreement; and the Parties do so of their own free will.

9. The sole duties of Escrow Agent shall be those described herein, and Escrow Agent shall be under no obligation to determine whether the other parties hereto are complying with any requirements of law or the terms and conditions of any other agreements among said parties. Escrow Agent may conclusively rely upon and shall be protected in acting upon any notice, consent, order, or other document believed by it to be genuine and to have been signed or presented by the proper party or parties, consistent with reasonable due diligence on Escrow Agent's part. Escrow Agent shall have no liability in the event of failure, insolvency or inability of the depository to pay such funds upon demand or withdrawal. Escrow Agent may seek the advice of counsel with respect to any issue concerning the interpretation of its duties hereunder, and Escrow Agent shall not be liable for any action taken or omitted in good faith upon advice of its counsel. Escrow Agent shall have the right at all times to pay the Settlement Funds and deposit the documents held by it (i) to the appropriate party under the terms hereof, or (ii) into any court of competent jurisdiction after a dispute between or among the parties hereto has arisen, whereupon Escrow Agent's obligations hereunder shall terminate. Escrow Agent shall be under no obligation to institute or defend any action, suit, or proceeding in connection with this Agreement. The Parties hereby jointly and severally indemnify the Escrow Agent against any loss, liability, or damage (including costs of litigation and reasonable attorneys' fees) arising from and in connection with the performance of the Escrow Agent's duties under this Agreement, whether such dispute arises between the parties hereto or with others, it being understood and agreed that the Escrow Agent may interplead such dispute, and the Parties will hold the Escrow Agent harmless and indemnify it against all consequences and expenses which may be incurred by the Escrow Agent in connection therewith, except those consequences and expenses arising by reason of the Escrow Agent's gross negligence or willful misconduct. Escrow Agent may be replaced as Escrow Agent, and a successor Escrow Agent may be designated, only upon the express written direction of Mansfield and Desman. Escrow Agent may resign as Escrow Agent at any time upon giving 30 days' prior written notice to Desman and Mansfield, during which period Mansfield shall designate a successor Escrow Agent and shall give notice thereof to Desman.

10. This Agreement contains the entire agreement among the Parties hereto with respect to the subject matter hereof. No promise, inducement, or agreement not expressly set forth in this Agreement has been made by any Party with respect to the subject matter hereof. This Agreement may not be amended in any respect except by writing duly executed by authorized representatives of the Parties. This Agreement shall be deemed to have been drafted by all Parties and should not be construed strictly against any Party.

11. It is agreed, acknowledged and understood that this Agreement shall be binding upon each of the Parties and their respective subsidiaries, affiliates, officers, directors, principals, members, shareholders, employees, agents, representatives, insurers, heirs, executors, administrators, successors in interest and assigns, as is applicable; provided, however, that neither Party shall be entitled to assign its rights or obligations under this Agreement, including without limitation, any rights to payment.

12. This Agreement shall be construed under and governed by the laws of the State of Connecticut.

13. If any of the provisions, terms or clauses of this Agreement is declared illegal, unenforceable or ineffective, those provisions, terms and clauses shall be severable, such that all

provisions, terms and clauses of this Agreement shall remain valid and binding upon the Parties to the fullest extent permitted by law.

14. This Agreement may be executed in counterparts, and any signature sent via facsimile or e-mail shall be treated as and have the full force and effect of an original signature. All exhibits attached hereto are hereby incorporated herein and made a part hereof.

15. Each of the undersigned is duly authorized and has the full right, power and authority to make, execute, deliver and perform this Agreement.

16. If any Party fails to perform its obligations under Section 1 on or before the date set forth in Section 1 for such performance, the non-defaulting Party shall be entitled to terminate this Agreement by written notice to the other Party at its address set forth in the Preamble (with a copy to the Escrow Agent), and upon receipt of such notice, the Escrow Agent shall be entitled to return the Settlement Funds and the documents to the Party from whom it received the same, this Agreement shall terminate, the Parties shall have no further liability to each other hereunder and their rights and obligations with respect to the Project and the services provided by Desman shall be as set forth in the Contract.

17. This Agreement shall not be effective until fully executed by all Parties.

[Remainder of page is intentionally blank. Signature pages follow.]





ESCROW AGENT:

Day Pitney LLP

By: Rosemary Ayers  
Name: Rosemary G. Ayers  
Title: Attorney

Date: April 1, 2014

EXHIBIT A

**Mansfield Parking Garage Cost Overruns**

Mansfield Parking Garage Cost Overruns				LRH 1/15/13
The computation of "net" additional costs paid by the Town of Mansfield due to design oversights				
	Quantity/Units	Price Town paid	Price Town should have paid	"Net" overpayment by Town
<b>1A. Rock</b>				
The bid for the construction of the garage was supposed to be a lump sum; however, in the detailed contract specifications for rock a unit price for rock excavation was mistakenly included so that none of the bidders carried any quantity of rock in their bids. As a result, 1180.3 CY of rock was assumed by the contractor to be paid at his price of \$200 per CY. With the developer's assistance, this very high price was negotiated with the contractor down to a lower price of \$138.50 per CY. However, this price was still far in excess of what we believe would have been included in a properly specified lump sum bid. At \$95 per CY the savings would have been \$51,000. At \$75 per CY the savings would have been \$75,000. The developer paid closer to \$55 per CY for his nearby non-trench rock excavation. Our more recent contract for the mass blasting, crushing and reuse of rock to build an adjacent roadway was only \$15.50 per CY. Using \$55 per CY as the basis for what we should have paid, the Town overpaid by \$83.50 per CY.	1180.3 CY	\$138.50 per CY	\$55 per CY <i>or less</i>	\$98,555
<b>1B. Related additional Engineering &amp; Inspection work for rock</b>				
Because of the error in the rock specifications so that rock was now a very expensive unit price item, additional geotechnical engineering was required to identify and quantify the rock excavation. This amounted to \$43,900 of unanticipated geotech services, which would not have been necessary had the rock been part of the lump sum bid as it was supposed to be.	Lump Sum	\$43,900	\$0	\$43,900
<b>2A. Calissons</b>				
The design of the garage was supposed to be founded on bedrock that according to the geotechnical report was supposed to be a few feet below the surface. Inexplicably, the geotechnical consultant did not have borings at the southern corners and foundation line and when the excavations for the foundations were done solid bedrock was up to 25 feet below the surface. The foundation had to be redesigned and calissons were selected as the best alternative. Several calisson contractors were interviewed and Donaldson was selected to construct them. Donaldson's bill was \$459,238, but the Town also had to pay \$140,000 to the site contractor to assist the calisson contractor as well as \$13,500 to the GC for additional supervision as well as \$96,193 and \$45,097 in OH&P (markup) to the GC. This totalled \$757,028, which we believe was at least \$250,000 more than the Town should have paid if the foundation design had been correct in the first place. The designer's cost estimator (Leach) estimated that the price of the calissons should have been a mere \$130,000. We tripled that estimate, allowed \$110,000 for OH&P and supervision, and still paid \$250,000 more than the \$500,000 the Town might have paid for this work were the foundation design not changed during construction.		\$757,028	\$500,000	\$257,028
<b>2B. Additional geotech field engineering for calisson construction</b>				
As per the ASCE specifications for the construction of calissons, a qualified geotech had to be present during their construction.	Lump Sum	\$68,100	\$0	\$68,100
<b>2C. Concrete construction</b>				
Because of the redesign of the southerly foundation, we believe a premium was paid for the additional concrete construction work. The designer's estimator noted that the change in concrete work should have been a net zero. Instead the Town paid \$55,000 for the additional concrete work.	Lump Sum	\$54,554	\$0	\$54,554
<b>3. Mechanical &amp; Electrical design errors and omissions</b>				
There were numerous shortcomings on the design plans dealing with mechanical and electrical items. These resulted in change orders that in addition to the 15% mark-up, cost the Town at least another 15% because the pricing was not done competitively. These items are explained below in general terms - the actual change order proposals can be reviewed for the exact nature of the work.				
A. Electrical - Wrong sized neutral conductor COP16		\$1,762	\$1,355	\$407
B. Electrical - Remote panel lighting inverter COP 39		\$2,025	\$1,558	\$467

C. Electrical – Standby Generator annunciator /EPO switch COP 40		\$ 23	\$3,479	\$1,044
D. Electrical – Feeder conduits; dat & telecom con. COP 21,34		\$ .67	\$18,590	\$5,577
F. Electrical – Fire alarm heat and A/C; remote alarm panel COP 36,44		\$17,772	\$13,671	\$4,101
F. Electrical – Transfer switch changes; generator changes COP 48		\$23,191	\$17,839	\$5,352
G. Electrical – Enlarge electrical room COP 55		\$639	\$492	\$147
H. Electrical – Grounding and feed conductors COP 33		\$36,955	\$28,427	\$8,528
I. Electrical – Relays for emergency lighting COP 84		\$1,293	\$995	\$298
J. Electrical – Exterior lights, both stairway doors COP 73, 77, 115		\$8,055	\$6,196	\$1,859
K. Electrical – Larger circuit panel COP 81		\$6,360	\$4,892	\$1,468
L. Electrical – Parking access control system COP 68		\$57,635	\$44,335	\$13,300
M. Electrical – Conduits for TS-2 door card readers COP 85		\$13,619	\$10,476	\$3,143
N. Electrical – Add lights and outlets to elevator areas COP 98		\$4,007	\$3,082	\$925
O. Electrical – Terminate secondary wiring at meter socket COP111		\$836	\$643	\$193
P. Electrical – Additional circuits for elevator COP 104		\$4,456	\$3,428	\$1,028
Q. Electrical – 40 amp breakers for charging stations COP 105		\$1,236	\$951	\$285
R. Mechanical – Increase size of plumbing vents COP 19		\$4,523	\$3,479	\$1,044
S. Mechanical – HD cleanouts; storm water piping reconfig COP 66,67		\$4,573	\$3,518	\$1,055
T. Structural – Cut elevator pit foundation walls to proper grade COP 50		\$2,683	\$0	\$2,683
U. Structural – Stair B top level doorway too narrow for code COP 114		\$6,736	\$5,182	\$1,554
V. Mechanical – No gas piping shown to generator COP 46		\$8,407	\$6,467	\$1,940
W. Structural – Elevator divider beams COP 76		\$2,837	\$2,182	\$655
X. Structural – Provide topping slab wire mesh COP 54		\$2,539	\$1,953	\$586
Y. Mechanical – Incorrect fire fittings COP 89		\$1,150	\$885	\$265
Z. Mechanical – Reserved area signage COP 96		\$1,885	\$1,450	\$435
AA. Mechanical – Reconfigure roof drains to storm system COP91		\$1,852	\$1,425	\$427
BB. Mechanical – Incorrect floor drains COP 43		\$13,722	\$10,555	\$3,167
CC. Mechanical – Provide knock box for fire emergencies COP 107		\$444	\$342	\$102
DD. Mechanical – Aluminum infill in chases COP 108		\$1,870	\$1,438	\$432
EE. Miscellaneous – Saturday and OT work to open on schedule COP 102		\$7,189	\$5,530	\$1,659
FF. Miscellaneous – 3rd floor bollards at nesting gates COP 113		\$3,450	\$2,654	\$796
GG. Miscellaneous – relocate Exit Signs COP 100		\$3,514	\$2,703	\$811
	subtotal – MEP:	\$275,905	\$210,171	\$65,734
4. Costs for 7th floor beyond our ability to pay (1.0 to 25% of \$750,000) – 10% figure is shown here				\$75,000
<b>GRAND TOTAL:</b>				<b>\$662,871</b>