

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Ordinance No. 2024- **63**

Introduced By: Mayor Matthew Castelli

**AN ORDINANCE  
AUTHORIZING THE MAYOR TO SIGN A SECOND AMENDMENT TO  
AGREEMENT WITH WALLACE & PANCHER, INC.  
FOR PROFESSIONAL CONSULTING ENGINEERING SERVICES**

WHEREAS, through adoption of Ordinance No. 2009-97, the City of Middleburg Heights and Mackay Engineering and Surveying Company entered into an agreement for professional consulting engineering services; and

WHEREAS, Mackay Engineering entered into an agreement to sell substantially all of its assets to Wallace & Pancher, Inc.; and

WHEREAS, through adoption of Ordinance No. 2021-98, the City of Middleburg Heights and Mackay Engineering and Surveying Company signed a First Amendment to Agreement to consent to the proposed assignment of the Agreement to Wallace & Pancher, Inc. on the terms and conditions set forth in the amendment; and

WHEREAS, Wallace and Pancher, Inc. has entered into an agreement to sell substantially all of its assets to The Mannik & Smith Group, Inc., an Ohio corporation; and

WHEREAS, the City desires to consent to the proposed assignment of the Agreement (as amended) to MSG, on the terms and conditions more fully set forth in the Second Amendment to Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized to sign the Second Amendment to Agreement between the City of Middleburg Heights and Wallace & Pancher, Inc., a copy of which is attached hereto and marked "Exhibit A".

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Ward Bortolotto  
President of Council

Matthew Casella  
Mayor

Passed: 9/10/24

Presented to Mayor: 9/11/24

Attest: M. Meola  
Clerk of Council

Approved On: 9-11-24

|            | Yea           | Nay   |
|------------|---------------|-------|
| Bortolotto | <u>T</u>      | _____ |
| Ali        | <u>T</u>      | _____ |
| Sage       | <u>T</u>      | _____ |
| Meany      | <u>T</u>      | _____ |
| McGregor   | <u>ABSENT</u> | _____ |
| Ference    | <u>T</u>      | _____ |
| Zakel      | <u>T</u>      | _____ |

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2024-63 adopted by the Council of the City of Middleburg Hts., on 9/10/24 was posted for a period of fifteen days, beginning 9/12/24 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola  
Clerk

CERTIFICATE

I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2024-63 passed on the 10<sup>th</sup> day of September 2024 by said Council.

Mary Ann Meola  
Clerk of Council

## SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT (the "Amendment") is made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF MIDDLEBURG HEIGHTS, OHIO, a municipal corporation of Ohio ("City") and WALLACE & PANCHER, INC., a Pennsylvania corporation ("W&P").

### RECITALS:

A. The City and Mackay Engineering and Surveying Company, an Ohio corporation ("Mackay"), entered into a certain Agreement dated January 1, 2010 pursuant to which the City retained Mackay to perform engineering services on behalf of the City (the "Agreement"), which Agreement was authorized by Ordinance No. 2009-97 of the City.

B. Mackay entered into an agreement to sell substantially all of its assets to W&P and, upon the consummation of such transaction, Mackay assigned its rights and obligations under the Agreement to W&P pursuant to that certain First Amendment to Agreement, dated December 31, 2021.

C. W&P has entered into an agreement to sell substantially all of its assets to The Mannik & Smith Group, Inc., an Ohio corporation ("MSG") and, upon the consummation of such transaction, W&P will assign its rights and obligations under the Agreement, as amended, to MSG.

D. The City desires to consent to the proposed assignment of the Agreement (as amended) to MSG, on the terms and conditions more fully set forth in this Amendment.

E. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Agreement.

### AGREEMENTS:

In consideration of the foregoing Recitals and the mutual covenants and agreements herein set forth, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. CONSENT TO ASSIGNMENT. In the event W&P consummates the sale of substantially all of its assets to MSG, the City consents to the assignment by W&P of its rights and obligations under the Agreement as amended (including by this Amendment) to MSG.

2. CONFLICTING TERMS; NO OTHER MODIFICATIONS. To the extent that any terms and conditions of this Amendment are inconsistent with the terms and conditions of the Agreement, the terms and conditions of this Amendment shall prevail. Otherwise, unless expressly modified or superseded herein, all of the terms and conditions of the Agreement shall remain unaffected and in full force and effect.

3. BINDING EFFECT; GOVERNING LAW. This Amendment shall be governed by and construed in accordance with the laws of the State of Ohio, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

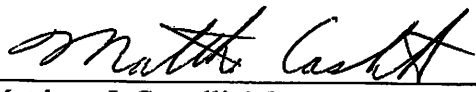
4. COUNTERPARTS. This Amendment may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument. This Amendment may be delivered by the parties hereto by facsimile or email in pdf format, and delivery in such manner shall be as binding and effective on the party delivering by facsimile or email as if the original had been delivered.

*(signatures on following page)*

IN WITNESS WHEREOF, the City and W&P have executed this Amendment as of the day and year first above written.

CITY:

CITY OF MIDDLEBURG HEIGHTS, OHIO

By:   
Matthew J. Castelli, Mayor

W&P:

WALLACE & PANCHER, INC.

By: \_\_\_\_\_  
Daniel P. Wallace, President