

**CITY HALL  
WINDSOR, ONTARIO  
N9A 6S1**

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## **CAO APPROVAL**

The (Acting) Chief Administrative Officer approved the following recommendation:

**Report Number: CAO 183/2022**

**Approved: July 22, 2022**

- I. That **APPROVAL BE GIVEN** pursuant to Delegation of Authority Bylaw 208-2008, Section 1.30 (b) "City as Grantor" Licenses, Easements (permanent and temporary) and Consents to Enter (Appendix A), to the granting of the following Consent to Enter:
- a) That the Consent to Enter is provided to Alberici Constructors Ltd. and Barton-Malow Canada Inc. ("**Alberici-Barton**") and its employees, contractors, agents, and assigns to enter upon the following City lands:
- 9655 Twin Oaks Drive described as Part Lot 138 (MCNIFF), Concession 3, designated as Part 1 on Plan 12R-16362 save and except Part 2, 12R16602 being PIN 01408-1919 (LT), and
  - 0 Valtec Court described as Part Lot 138 (MCNIFF), Concession 3, designated as Part 8 on Plan 12R-18316 being PIN 01408-1920 (LT)
- The above parcels (the "**Lands**") are shown on the aerial image attached as Appendix B.
- b) Alberici-Barton and/or its contractors, subcontractors, agents, employees and assigns will enter the Lands for the purpose of undertaking improvements to the building at 9655 Twin Oaks at their own expense. These improvements include:
- New walls to create offices and conference rooms
  - (7) new HVAC roof top units
  - Electrical distribution for new offices and cubicles
  - Security and access control system
  - Cubical installation for staff seating
  - New bathrooms to meet code minimums
  - General painting
- "Collectively the "**Works**").

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Said access includes permission to bring all devices, machinery, vehicles and equipment necessary for the carrying out of the Works;

- c) The term of this agreement shall commence on the day the agreement is signed by all parties and terminate the earlier of: (a) the date on which the Lease is fully executed, or (b) ninety (90) days from the Effective Date of this agreement (the “**Term**”);
- d) Access to the Lands will be from Twin Oaks Drive and Valtec Court;
- e) Alberici-Barton will comply with all statutes, laws, by-laws, regulations, ordinances and requirements of governmental and other public authorities having jurisdiction over or in respect of the Lands, or any portion thereof, and all amendments thereto at any time and from time to time, including but not limited to the *Workplace Safety and Insurance Act* and the most up to date regulations in place under the *Emergency Management and Civil Protection Act*.
- f) Alberici-Barton will comply with the most up to date regulations in place under the *Emergency Management and Civil Protection Act* and the *Reopening Ontario (A Flexible Approach Response to COVID-19) Act*, as they may be amended from time to time, regardless of the frequency of such amendments. Alberici-Barton will also comply with any guidelines and best practices issued by the Province of Ontario and any other governing body in relation to limiting the spread of COVID-19;
- g) Alberici-Barton acknowledges having received and reviewed a copy of a Phase I Environmental Site Assessment dated July 18, 2022 prepared by Wood Environmental & Infrastructure Solutions Canada Limited (the “Phase I ESA Report”) and made themselves aware of, inter alia, Section 7 Conclusions and Recommendations contained in the Phase I ESA Report, and in particular the identification of potential hazardous substances located in the Building. The Grantees acknowledge having been advised that Nextstar at its sole cost and expense has agreed with the City to assume all responsibility and liability for any use, occupation, renovation and improvement undertaken in, and made to, the Building, including without limitation, ensuring that (i) any and all further investigations required pursuant to applicable laws to be undertaken of the Building prior to any of the Work is preformed, (ii) appropriate removal and/or remediation action is taken to remove any designated hazardous substances (as described in the Phase I ESA Report) if

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required by applicable laws, and (iii) the Building does not pose a health or safety risk to anyone who enters and/or works in the Building. The Grantees agree that they will make no claim, action, suit or demand of any kind whatsoever with regard to the environmental condition of the Building, and waives any right pursuant to applicable laws and in common law to do so.

h) Alberici-Barton will be required to provide the City with indemnification and require proof of insurance with the following minimal coverage, satisfactory to the City:

- Commercial General Liability coverage that includes coverage for boring, drilling, pile driving, and caisson work, and will include the City as an additional insured, with a cross-liability/separation of insureds clause, and a 30- day notice of cancellation provision, and in the amount of \$5 million per occurrence, to be primary and non-contributing, with proof of same to be satisfactory in form and content to the City.
- Each vehicle owned or leased used directly or indirectly in the performance of the Work must be insured with an Automobile Policy in accordance with the laws of the Province of Ontario.
- Contractor's Pollution Liability insurance policy, covering third party bodily injury, property damage, consequential loss or damage, including clean-up and restoration costs, howsoever arising from the Work. The coverage shall have limits of not less than \$2 million per occurrence, indemnifying and protecting the Contractor as named insured, "The Corporation of the City of Windsor" as additional insured, and including provisions for cross liability and severability of interests.

Or as such requirements that may be amended, restated and/or supplemented by the City's Risk and Insurance Department from time to time; and,

II. That the Chief Administrative Officer and the City Clerk **BE AUTHORIZED** to sign a Consent to Enter Agreement with Alberici-Barton for access to the Lands, approved as to form and content by the City Solicitor or designate.

Report Number: CAO 183/2022  
Clerk's File: APM/14289



## OFFICE OF THE CITY CLERK COUNCIL SERVICES

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*Anna Ciacelli*

Deputy City Clerk/Supervisor of Council Services

July 28, 2022

### Department Distribution

Coordinator of Real Estate Services
Manager of Real Estate Services
Deputy City Solicitor
Commissioner, Legal & Legislative Services
(Acting) Chief Administrative Officer

### External Distribution