GRANTING A VARIANCE OF FLOODPLAIN DEVELOPMENT CODE SECTION 50-34 (14) FOR DEVELOPMENT IN A FLOODWAY THAT RESULTS IN AN INCREASE IN BASE FLOOD ELEVATION FOR DES MOINES LEVEE ALTERATIONS – PHASE C

WHEREAS, Des Moines Municipal Code Chapter 50 requires that development within the City's floodplain and floodway districts, as designated by flood insurance studies published by the Federal Emergency Management Agency (FEMA) and shown on related flood insurance rate maps utilized by the City, comply with the City's floodplain performance standards; and

WHEREAS, specifically, Des Moines Municipal Code Section 50-34 (14) prohibits proposed development within a designated floodway from increasing flood levels within the flood plain during the occurrence of a 100-year flood; and

WHEREAS, Des Moines Municipal Code Section 50-35 requires that a certificate of compliance, or floodplain development permit, must be issued by the City prior to commencement of any proposed development within a floodplain area, and that any application for such certificate/permit shall be denied if the City Engineer determines that the proposed development does not meet applicable performance standards of Section 50-34; and

WHEREAS, Section 50-35(c) provides that the city engineer shall review each floodplain development application and shall, within a reasonable time, make a determination as to whether the proposed development meets the applicable performance standards of section 50-34 and, on the basis of such determination, shall issue or deny the certificate of compliance; and

WHEREAS, for a denial the applicant shall have the right to appeal to the city council for a variance from the requirements of this article on the grounds that (i) the city engineer made an erroneous determination or (ii) an exception or modification should be made to the full application of the performance standards of section 50-34 of this article in order to avoid unnecessary hardship to the applicant or to further the public interest; and

WHEREAS, with the modeled 100-year event increase ranging from 0.01 feet to 0.07 feet, the Des Moines Levee Alterations – Phase C project does not meet the performance standard identified in Section 50-34 (14) of the Municipal Code; however, the City Engineer has not issued a denial of certificate of compliance as the project at issue is a City project; and

WHEREAS, this matter is coming before the City Council as a variance that may only be granted by the City Council; and

WHEREAS, Section 50-35(c) allows the City Council to authorize a variance of the floodplain development standards in order to avoid unnecessary hardship to the applicant or to further the

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public interest, when the requested variance meets the criteria as set forth in the Council Communication No. **22-373**, submitted herewith and incorporated herein by this reference; and

WHEREAS, as stated in Council Communication No. **22-373** the City Engineer has determined that the Project fulfills the criteria required by Section 50-35(c) for Council to grant a variance, subject to conditions stated below.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. The City Council hereby adopts the findings and determinations of the City Engineer as set forth in Council Communication No. **22-373** regarding the criteria required for variance approval for the Des Moines Levee Alterations – Phase C Project.

2. Based on the findings and determinations set forth in Council Communication No. **22-373**, the City Council hereby further finds in regard to the Des Moines Levee Alterations – Phase C Project that:
   a. An exception to full application of performance standard Section 50-34(14) is necessary to avoid unnecessary hardship to the applicant and to further the public interest; and
   b. All variance approval criteria have been met.

3. Pursuant to Section 50-35(c), the City Council hereby conditionally approves the variance to Section 50-34(14) subject to the following:
   a. The design and construction of the Project must conform to the representations made in the submitted floodplain development application, including but not limited to the requirement that the Project does not increase flood levels in the project area by more than 0.07 feet depending on location.
   b. Any change or revision to the design or construction of the Project requires review by the City Engineering Department pursuant to Des Moines Municipal Code Chapter 50, and the City Engineer may request reconsideration of this variance by the City Council as a result of said further review.
   c. This variance will be revoked, effective immediately and with no further action required by the City Engineer and/or City Council, in the event of (i) any change in projected or actual rise in the flood levels 0.07 feet in the project area, as shown in the design or construction plans for the Project; and/or (ii) any failure to comply with the IDNR conditions of concurrence set forth in Exhibit B hereto. The applicant may submit a subsequent variance application pursuant to Section 50-35(c) in the event of such revocation.
   d. This variance is subject to City approval of design, construction, maintenance and operations, and similar related agreements, which agreements shall be submitted to Council for consideration and approval.

Agenda Item Number

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Date_____August 8, 2022_____

(City Council Letter Number **22-373** attached)
Activity ID 08-2020-006

Moved by _____ to adopt.   Second by _____

FORM APPROVED: s/*Kathleen Vanderpool*
Kathleen Vanderpool
Deputy City Attorney

SLN pw

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED   APPROVED

_____ Mayor

CERTIFICATE

I, Laura Baumgartner, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk