

**CITY COUNCIL  
COMMUNICATION:**

**03-092**

**AGENDA:**

FEBRUARY 24, 2003

**SUBJECT:**

EXTENDED  
AIRPORT LIABILITY  
COVERAGE FOR  
ACTS OF  
TERRORISM

**TYPE:**

**RESOLUTION**  
ORDINANCE  
RECEIVE/FILE

**SUBMITTED BY:**

MERRILL R.  
STANLEY  
FINANCE DIRECTOR

MARK SCHULTZ  
RISK MANAGER

**ITEM \_\_\_\_\_**

**OFFICE OF THE CITY MANAGER  
CITY OF DES MOINES, IOWA**

**SYNOPSIS —**

As a result of the terrorist attack on September 11, 2002, the City's Airport Liability Insurance policy's War Risk and Terrorism endorsement was cancelled. Later that year, the same endorsement was offered back with the same cancellation provision but with limits capped at a total of \$50 million. On November 26, 2002, Congress passed the Terrorism Risk Insurance Act of 2002 (TRIA) which required insurers to provide an endorsement that would allow coverage for acts of terrorism up to full policy limits and with no cancellation provision. To protect against future cancellation of the current endorsement and to maintain compliance with revenue bond covenants requiring insurance, staff recommends that the City purchase the TRIA endorsement with limits of \$50 million. The prorated premium from the required retroactive date of November 26, 2002 to July 1, 2003 is \$28,837. It should be noted that the agreements with the airlines that use the Airport allow for these charges to be passed back to the airlines.

**FISCAL IMPACT —**

The cost of the \$28,837 premium will be paid from the Airport's Fiscal Year (FY) 2003 Operating Budget.

**RECOMMENDATION —**

**Approval.**

**BACKGROUND —**

The City's insurance marketing strategy is to aggressively market about one-third of the City's insurance coverages every three years. The purpose of this strategy is to attract advantageous pricing by offering up to three years of coverage to the selected carriers. The rotating cycle that began with the July 1, 1998 renewal has been: (1) Airport Liability, (2) Special Excess Liability and Excess Workers Compensation, and (3) Property and Crime Insurance.

The City last marketed Airport Liability as of the July 1, 2001 renewal and chose to continue purchasing insurance through Phoenix Aviation Managers, Inc. At that time, the premium was \$84,950 for

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\$200,000,000 in coverage, a \$50 million primary policy and a \$150 million umbrella policy. As in prior years, these policies included standard endorsements that extended coverage for War and Terrorism and did so at no additional premium. These endorsements also included a seven-day cancellation provision that allowed the carriers to cancel the policy with seven days written notification. After the attack on September 11, 2001, all carriers worldwide invoked this right and cancelled the endorsement coverage.

Later that year, most carriers offered back the same endorsement to policyholders, but this time at a cost. They continued to include the seven-day cancellation provision as existed in the original endorsement, but they capped the limit of the coverage at \$50,000,000 rather than at full policy limits. A new endorsement applying only to the City's primary policy was offered to the City by its insurer, Phoenix Aviation Managers, at a prorated cost of \$51,789 for the period of January 1, 2002 through July 1, 2002. At that time, the Airport consulted with the City's bond counsel to explore if the insurance provisions of the Airport Revenue Bond covenants required the City to continue the coverage offered by the endorsement. The Airport was informed that the bond covenants required the City to purchase general liability coverage as is customarily insured by similar enterprises. The Risk Manager and the City's Insurance Advisor believe it would be difficult to certify that the coverage was not available at reasonable terms and conditions pursuant to the requirements under the bond covenants. Based on this opinion and the fact that the United States was about to engage in military action in Afghanistan, the City's Aviation Department staff, the Risk Manager, and the City's insurance agent (Robert Jester) concluded that the uncertainty surrounding the threat of terrorism and the need to comply with the bond covenants warranted recommending that the City purchase the new endorsement. For the same reasons, the same endorsement was continued in the July 1, 2002 renewal of the Airport's Airport Liability Insurance policy at an annual premium of \$96,538. The annual premium for the primary and umbrella policies without the War and Terrorism endorsements is \$135,680. Thus, the total cost of the policies and the extended coverage endorsements as of July 1, 2002 was \$232,218.

In November 2002, Congress passed into law the Terrorism Risk Insurance Act of 2002 (TRIA). In accordance with this Act, the federal government will share the cost of losses due to acts of terrorism up to a maximum of \$100 billion. However, only losses that fall within TRIA's definition of an act of terrorism will be eligible for this program. TRIA also requires that all insurance carriers that want to participate in this shared risk program must offer all their insureds coverage for TRIA defined acts of terrorism up to the full limits of the insureds' policies. In addition, TRIA requires that the insureds must respond to their carrier's proposal within 30 days of receipt of the written notification. TRIA also mandates that the new endorsements

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offered to insureds cannot include any cancellation provision except in the event that the federal government's \$100 billion share of total losses is expended.

The City received its TRIA endorsement offer from Phoenix Aviation Managers on or about February 2, 2003. Because the City's coverage is divided between a primary policy of \$50 million and an umbrella policy of \$150 million, Phoenix has had to offer the City a TRIA endorsement up to the limits of each individual policy. If the City chooses to accept this offer, it must do so no later than March 4, 2003. If the City accepts, the coverage will be retroactive to November 26, 2002. The prorated premium for the primary policy through July 1, 2003 will be \$28,837, give or take one day. The prorated premium for the umbrella policy for the same period will be \$68,680. If the City were to accept both, the total prorated premium would be \$97,517. These premium quotes are guaranteed through July 1, 2003; however, the guarantee is contingent upon the City concurrently continuing in effect the current Phoenix endorsement on the Airport's primary policy. Since no reimbursement of paid premium for the current endorsement is available if cancelled, the City has no reason to do so prior to the July 1, 2003 renewal. However, as of the City's July 1, 2003 renewal, the TRIA endorsement pricing could change based on events that may occur between now and then.

The primary differences between the TRIA endorsements being offered and the current primary policy endorsement are: (1) the current endorsement includes coverage for war, hi-jacking, acts of terrorism, detonation of a nuclear device, strikes, riots, and sabotage, to name most - the TRIA endorsement only covers a more narrowly defined act of terrorism; and (2) the current endorsement can be cancelled with seven days written notification (48 hours in the event of the detonation of a nuclear device) - the TRIA endorsement cannot be cancelled until the federal government's \$100 billion share of the total losses incurred is exhausted. The advantages and disadvantages of the two endorsements are as follows: (1) the current endorsement has broader coverage, but all coverage can be cancelled if any covered event occurs anywhere in the world, and there is little doubt that the carriers will do so since they did it before; and (2) the TRIA endorsement only covers certain acts of terrorism, but regardless of when or where such an act may occur, the coverage cannot be cancelled unless the total losses associated with such events exceed the \$100 billion guaranteed by the federal government.

Upon reviewing the issues described above, the Aviation Department and the Risk Management Office present the following analysis and recommendation regarding the decision facing the City. Staff has concluded that:

1. Because the Airport Revenue Bonds do include insurance

provisions that are intended to ensure the Airport's capability of meeting its bond payment obligations in the event that some event were to disrupt the revenue generating capability of the Airport to do so, and

2. Because the current War and Terrorism endorsement can be cancelled in seven days of any terrorist act that could trigger its coverage and insurance carriers have demonstrated that they will exercise that right immediately upon such an occurrence, and
3. Because there is a high probability that the United States will be taking military action against the nation of Iraq which would be an event that would trigger insurance carriers' right to cancel the existing endorsement, and
4. Because some of the few airline industry carriers are already discontinuing their current War Risk and Terrorism endorsements as of their pending renewal dates and are only going to offer TRIA endorsements which could be a signal that only TRIA endorsements may be available as of the City's upcoming renewal, and
5. Because the 132<sup>nd</sup> Fighter Wing of the Iowa Air National Guard is located at the Airport and heightens its profile as a possible terrorist target, and
6. Because the Airport would be without any coverage for such and could possibly be considered non-compliant with the insurance provisions of its revenue bond covenants if the City were to not accept the TRIA endorsement offered by Phoenix Aviation Managers and the current endorsement were cancelled prior to July 1, 2003 because of an event such as military action with Iraq.

Based on the above analysis, staff recommends that the City purchase the TRIA endorsement option for the Airport's primary policy of \$50 million through July 1, 2003 at a prorated premium of \$28,837 to ensure that, regardless of what may happen worldwide that could trigger the cancellation of the City's current endorsement, the Airport continues to have coverage and can demonstrate compliance with its obligations to operate in accordance with its revenue bond covenants and to buffer the taxpayers of Des Moines from financial risk. The Airport Board, at a special meeting held February 19, 2003, concurred with this recommendation as per attached Resolution A03-46.

In summary, the Airport currently carries Airport Liability Insurance coverage consisting of a \$50 million primary policy and a \$150 million umbrella policy. The primary policy currently includes a War Risk and Terrorism endorsement. The current annual premium for the primary

and umbrella policies is \$135,680 and the current annual premium for the War Risk and Terrorism endorsement is \$96,538. The Airport's total current premium is \$232,218. The action recommended above will provide an acts-of-terrorism only endorsement to the current primary policy back-dated to November 26, 2002 and expiring on July 1, 2003. The prorated premium for the additional endorsement is \$28,837. The purpose of this endorsement is to guarantee that the Airport has such coverage if some action results in the cancellation of the current War Risk and Terrorism endorsement. Adding the new endorsement will raise the Airport's annual premium for the period July 1, 2002 to July 1, 2003 to \$261,055.

Staff will monitor events and any changes in the coverages needed and/or being offered and will make further recommendations as of the July 1, 2003 renewal. It should be noted that the agreements that the Airport has with the airlines that use the Airport allows the Airport to pass these charges back to the airlines.

Attachment