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January 24, 2004

To: Mr. Riccardo Ginex
City Manager
Downers Grove

From: Joe Karaganis
SOC counsel

**Re: Objections To The Proposal That Downers Grove Endorse Chicago's
O'Hare Expansion Project**

Per our telephone discussion Friday, I understand that there is a proposal on the Village Council's agenda for January 27th seeking Downers Grove's endorsement of Chicago's proposed "O'Hare Modernization Project" ("OMP").

Respectfully, we ask the Village Council to: 1) either reject the endorsement request outright for the reasons set forth in the enclosed materials, or 2) table any action on a request for endorsement until all of the data and reports relating to the project are available so that an informed decision can be made at a later date by the Village Council.

Common areas of Agreement between Chicago and the Suburban O'Hare Commission.

Before turning to areas where SOC disagrees with Chicago, let us describe areas where SOC and Chicago (and Downers Grove) most likely agree as to the aviation needs of the Chicago region.

- First, we can all agree that the metro Chicago region needs sufficient airport capacity to accommodate and capture future aviation growth. Clearly, neither the current O'Hare nor the current Midway have the current capacity to accommodate projected future aviation growth. We all agree that the region needs major additional airport capacity — either at O'Hare, or Midway, or a new airport working in a metro airport system in concert with O'Hare and Midway — to accommodate and capture future aviation growth.
- Second, we all agree that any additional airport development in the region should give us an airport system that will accommodate the traffic growth without subjecting air travelers to unacceptable levels of delays. It makes no sense to build airport facilities that will simply create the same or even worse delay conditions that we have historically experienced.

- Third, we all agree that any additional airport development be designed so that it can handle existing and future air traffic in a manner consistent with a high margin of safety — an airport system that does not create increased safety risks to achieve desired capacity gains.
- Fourth, there should be no dispute that any additional airport development to meet our capacity and delay needs be designed to be built at a cost that the airlines can afford. In today's highly competitive low-cost airline environment, it makes no sense to build a high-cost airport infrastructure that will render the airlines using that airport uncompetitive from a cost standpoint. Further, any such airport development should not move forward until there is a sound financial plan as to how the cost of the airport will be financed.
- Finally, we should all agree that any additional airport development to meet our capacity and delay needs should be constructed and operated so as to minimize the adverse environmental impact on the surrounding communities.

Chicago's Assertions As To Its O'Hare Expansion Plan

Chicago has made a number of assertions as to the need for and benefits of the OMP.

- First, Chicago claims that the OMP is needed to reduce delays. Chicago claims that OMP will reduce delays by 95% in bad weather and 79% overall.
- Second, Chicago claims that the OMP is needed to increase airport capacity to meet growth in aviation demand. Chicago claims that OMP will provide sufficient capacity to accommodate 1.6 million flights — as increase of roughly 700,000 flights over current levels.
- Third, Chicago claims (presumably based on the assertions as to increased capacity of O'Hare to 1.6 million flights) that OMP will produce an additional 195,000 jobs in the region and an additional 15-19 billion dollars in additional economic benefits to our region.
- Fourth, Chicago asserts that the OMP can be constructed for 6.6 billion dollars a cost which Chicago and the principal airlines serving O'Hare (United and American) say can be easily financed.
- Finally, Chicago asserts that the increase in flights (700,000 new flights) will actually reduce noise over surrounding communities as compared to the noise that would be experienced if the future flight volume at O'Hare was maintained at the current approximately 900,000 flights.

Findings as to Chicago's proposed O'Hare Expansion Plan by FAA experts

The communities of Bensenville and Elk Grove Village retained a team of nationally known aviation experts — led by the former Acting Administrator of the Federal Aviation Administration (FAA), Joseph Del Balzo. Del Balzo's charge was to examine the Chicago O'Hare expansion proposal to determine: 1) whether it met the

claims asserted by Chicago and 2) whether the Chicago O'Hare expansion proposal met the common objectives that we can all agree upon.

Mr. Del Balzo, who served for over 30 years in a variety of senior management positions at FAA, culminating in being the highest ranking career professional in the agency, assembled a team of senior aviation experts to examine each phase of the Chicago proposal. His team included the former FAA official responsible for aviation safety for the entire FAA as well as top professionals in airspace issues, cost, and capacity. The resumes of key team members are enclosed.

In a letter report submitted to FAA on January 16, 2003 Mr. Del Balzo's expert team submitted the following findings:

- **Chicago's O'Hare Expansion Plan Will Not Reduce Delays. Indeed delays will actually increase.** Chicago's plan calls for the use of a system of narrowly spaced parallel runways which are critically dependent on good (high visibility) weather to operate at full capacity. When reduced good weather or inclement weather conditions exist, the proposed runway system must be partially shut down or highly restricted. The end result is that Chicago's proposed expansion creates significantly *greater delays* than have historically been experienced at O'Hare.
- **Chicago's O'Hare Expansion Plan Falls Far Short Of Our Region's Capacity Needs.** Chicago initially claimed that its O'Hare expansion plan would have the capacity for 1.6 million flights annually. In a later Chicago study Chicago now says that the expansion plan will only accommodate 1.3 million operations — far short of the original claim. Indeed, the massive delays experienced in the Chicago plan at 1.3 million operations suggest that the realistic capacity gains are far less. This huge capacity shortfall in Chicago's O'Hare design means that much of the region's traffic demand (Midway is already stressed to its capacity limits) will be forced to leave the metro Chicago region, taking thousands of jobs and billions in economic development with it.
- **The Regional Airspace in the Vicinity of O'Hare Does Not Have the Capacity to Accommodate the Traffic Growth Projected for O'Hare.** The capacity shortfall and delay problem associated with the narrowly spaced runway design is only one of the major problems afflicting the proposed OMP. In addition to design problems on the airport itself, Chicago has ignored other area air traffic in the airspace congestion component and failed adequately to consider airspace as a critical limiting factor at O'Hare. Chicago's O'Hare expansion plan will make the delay and congestion problem worse by trying to cram even more airplanes into too little airspace.
- **Chicago's O'Hare Expansion Plan Has Inadequate Safety Margins.** A combination of relaxed safety standards, increased runway crossings and loss of cross-wind runway capacity will stress the safety margins desired for a modern commercial airport.
- **Chicago's O'Hare Expansion Plan Costs Too Much.** Chicago claims that the Chicago expansion plan will cost \$6.6 billion. Yet Chicago refuses to give the basis and data behind its estimate. The Del Balzo expert team believes the cost of the

expansion project (including needed terminals and access roads) will exceed \$15-20 billion. Not only has Chicago failed to disclose how it will actually pay for the full costs of the expansion (the financing plan has not been disclosed), but — even if it can be financed — the high cost of the Chicago O’Hare plan will put an enormous financial strain on the existing airlines at O’Hare, rendering them uncompetitive in the new low-cost airline competitive environment. The high cost of the expanded O’Hare is likely to drive passengers and carriers away from O’Hare.

- **Chicago Is Hiding the Critical Information From Professional and Public Scrutiny.** The Del Balzo expert team emphasized that Chicago is refusing to make public the details supporting Chicago’s claims. For example, Chicago has refused to disclose the basis for Chicago’s cost estimates. Similarly, Chicago refuses to disclose the basis for any of its capacity, delay reduction, job growth, or economic development claims.

Independent Perspective of Unpaid Highly Respected Aviation Professionals

Rather than provide specific evidence to counter the criticisms of the Del Balzo team’s report, Chicago argues that Del Balzo and his team of experts are biased because they have been paid for their investigation. (Chicago does not mention that Chicago has paid Chicago’s own consultants tens of millions of dollars for Chicago’s consultants’ opinions and analysis)

To address this anticipated diversionary criticism, Joe Del Balzo asked two highly respected aviation professionals — David Hinson and Jonathan Howe — to examine the Del Balzo team report and provide their views on the concerns raised by Del Balzo.

David Hinson is a former Administrator of the FAA; and Jonathan Howe, also a former senior FAA official, served as CEO of Airports Council International. Messrs. Hinson and Howe agreed to perform this review function without any pay.

Here is some of what these independent unpaid aviation experts had to say about the Del Balzo report:

“The Del Balzo report and Chicago’s own study indicate that the narrowly spaced runway configuration proposed by Chicago will not provide needed capacity increases and will actually increase delays over current and historic O’Hare conditions.”

“The concerns raised by the Del Balzo report raise serious and troubling questions that ask whether Chicago’s O’Hare Modernization Program makes any sense, and whether it will help or hinder civil aviation.”

“The report also highlights the lack of public process and disregard of FAA’s recommended planning practices that is disconcerting for an airport development undertaking of this magnitude.”

“We have reviewed the scant public record supporting this 20 billion dollar reconstruction project at O’Hare. Very little of the critical facts, data, and information needed to make an informed, responsible decision on this massive proposal has been made available to the public and the impacted communities.”

“..[T]hese substantial questions are not being asked, investigated, and debated today in a public forum. The City of Chicago has unilaterally decided to keep the public out of the analysis of what is or may be the best solution (or even a good solution) for the Chicago region and to withhold critical information from the scrutiny of the public and the media.”

Statement of David Hinson and Jonathan
Howe, January 16, 2003 (transmitted by e-
mail)

Environmental And Public Health Concerns

Congressman Henry Hyde has always cautioned that claims of economic benefit must be examined in light of the potential environmental harm. As shown above, Chicago’s O’Hare expansion plan (OMP) fails even the most fundamental examination as to its asserted economic merits: 1) The OMP will not meet the capacity needs of the region; the OMP will actually increase, not reduce delays; 2) the OMP increases safety risks; 3) the OMP costs too much and cannot be financed; 4) the high cost of OMP threatens the continued economic viability of the current airlines serving O’Hare in today’s low-cost competitive environment and will deter other low-cost airlines from using the high cost expanded O’Hare, and 5) the OMP threatens to export jobs and economic development out of the Chicago region to other states.

But beyond its fundamental economic flaws, Chicago’s expansion plan raises serious environmental and public health concerns — both as to noise and toxic air pollution. Chicago’s OMP will cause a major increase in noise for DuPage County communities and will increase toxic air pollution emissions from O’Hare — already at present the largest source of toxic air pollution emissions in the state of Illinois.

Noise

Turning first to noise, Chicago’s OMP will dramatically increase noise over DuPage County communities — even without a single additional flight at O’Hare. The reason for this is simple. The existing traffic base departure and arrival patterns will be changed from a current pattern that distributes arrivals and departures over several compass directions (e.g. NW, SE, SW, NE, E, W) into a pattern that heavily emphasizes East and West departures and arrivals. In addition, whatever additional flights are squeezed into the airport under the badly designed OMP will add to this adverse noise impact.

Going from the increased noise of the existing traffic (as the arrival and departure paths are changed) to the impact of additional flights, Chicago treats the noise impact of additional flights as a word game. Chicago says that the noise impact of the OMP will be less than the noise impact of the existing runway configuration. But that claim is based on an “apples to oranges” comparison – comparing the noise generated by O’Hare’s current aircraft types for the existing configuration with the noise that will be generated by a future fleet of different aircraft in the OMP.

An “apples to apples” comparison would follow basic common sense — comparing similar aircraft types for both the future O’Hare in its current configuration with the future O’Hare with OMP. There is no question that the noise from 900,000 aircraft is less than the noise impact of 1.3 million or 1.6 million similar aircraft. Yet Chicago asks us to believe that the noise of the 1.3 million or 1.6 million aircraft Chicago proposes for OMP is actually less than the noise impact of 900,000 similar aircraft.

Toxic Air Pollution

Chicago O’Hare is already the largest generator of toxic (hazardous) air pollutants in the State of Illinois. (See chart comparing O’Hare with the other large reported industrial sources of toxic air emissions in the State of Illinois.) With Chicago’s proposed O’Hare expansion, these toxic emissions will likely grow larger.

The health related concerns created by O’Hare’s toxic emissions have been the subject of detailed analysis in a health risk study by a nationally known public health consulting firm, Environ, Inc., a firm that performs health risk studies for Fortune 100 corporations. That study found that O’Hare current toxic emissions cause increased risks of cancer and related adverse health effects in a broad area around O’Hare. See *Preliminary Study And Analysis Of Toxic Air Pollutant Emissions From O’Hare International Airport And The Resulting Health Risks Created By These Toxic Emissions In Surrounding Residential Communities*, Volume IV (This report can be accessed at <http://www.suburban-ohare.org/objects/1140.pdf>)

The Suburban O’Hare Commission is not the only governmental agency to highlight the significant toxic emission problems for airports. In 2003, a multi-state organization called NESCAUM (Northeast States For Coordinated Air Use Management) published a report which found that in the Northeast states of Massachusetts, Connecticut, and New Hampshire the major public airports (Boston Logan, Providence, and Hartford-Springfield) are the largest sources of toxic air pollution emissions in those states:

“aircraft engines emit considerable amounts of toxic air pollutants”

See *Controlling Airport Pollution* (a report funded by the United States Environmental Protection Agency and performed by NESCAUM) II-13

“Toxic emissions from the airports are high when compared with emissions from the largest stationary sources in each of the three

states. While improvement is needed in the method used to calculate toxic emissions from aircraft, the inventory provides a rough approximation of emissions, indicating that toxic emissions from aircraft greatly exceed those of the largest stationary sources in the three states.

Id at II-13

Estimated toxic emissions, such as benzene and formaldehyde, from aircraft operating at the three studied airports exceed those of the largest stationary sources in each of the three states where these airports are located.

Combined aircraft-related emissions of benzene totaled 20 tons at Logan, Bradley, and Manchester in 1999. For comparison, aggregate benzene emissions from the largest stationary sources in Massachusetts, Connecticut, and New Hampshire combined totaled six tons in 1996.

ES-2¹

It is clear that Chicago's O'Hare expansion project will significantly increase toxic emissions from O'Hare and will impact the health risk posed by those emissions on the residents of surrounding communities.

Destruction of Religious Freedom

Hidden in the debate over economic benefits, costs, and environmental impacts of Chicago's O'Hare expansion plan is a serious constitutional problem involving the free exercise of religion. While government has a First Amendment responsibility to avoid the establishment of religion, the government also has a concomitant obligation under the First Amendment not to interfere with the Free Exercise of Religion.

Chicago is aware of this constitutional obligation and the related obligation under the Illinois Religious Freedom Restoration Act that prohibits government (here Chicago) from causing injury to the free exercise of religion unless Chicago can show: 1) a compelling governmental need to injure religious activity and 2) the absence of an alternative which would accomplish the governmental objective without causing the injury to religious activity.

In the case of the proposed O'Hare expansion, Chicago intends to destroy two religious cemeteries (St. Johannes Cemetery and Rest Haven Cemetery) for runway expansion. This destruction is directly contrary to the religious beliefs of the families whose loved ones are buried at these cemeteries — who believe that these graves are sacred consecrated ground and that these graves must remain inviolate until Judgment

¹ The NESCAUM report at http://64.2.134.196/workgroup/aircraftport/Aviation_Final_Report.pdf

Day. (For details on the religious constitutional and legal issues relating the proposed destruction of these religious cemeteries see the discussion of the St. John's case at www.becketfund.org. The Becket Fund for Religious Liberty, a prominent public interest law firm who's Board of Directors includes Cardinal George and Congressman Hyde, is representing St. John's United Church of Christ and other religious objectors in this dispute. See also the attached flyer from the Becket Fund)

Knowing that it cannot meet the burden of the First Amendment or the Illinois Religious Freedom Restoration Act, Chicago has successfully persuaded the Illinois Legislature to enact an outrageous and unconstitutional law. At Chicago's urging, the Legislature passed the "O'Hare Modernization Act". This statute expressly strips the protection of the Illinois Religious Freedom Restoration Act from these two religious cemeteries in the path of the proposed southern O'Hare runway while continuing the protection of the Illinois RFRA for every other religious institution in the State, including every other religious cemetery.

This outrageous action discriminating against two specific religious institutions (the two religious cemeteries in the shadow of O'Hare) clearly violates both the First Amendment Free Exercise of Religion guarantee as well as the Equal Protection Clause of the United States Constitution. Moreover, this action establishes a terrible precedent. If allowed, Chicago and the Legislature's actions provide a clear path for other governmental bodies to take over and destroy other religious facilities by the simple expedient of stripping the targeted facilities from the protection of the religious freedom laws. If allowed to stand, every church facility in every community (including Downers Grove will be vulnerable to governmental condemnation and destruction simply for the convenience of the government.

Now Chicago wants the Village Council of Downers Grove to endorse the pillaging of the constitutional and statutory guarantees of religious freedom. Make no mistake. A vote to endorse Chicago's O'Hare expansion plan is a vote to destroy the constitutional and statutory guarantees of religious freedom for thousands of religious believers whose family members are buried in St. Johannes Cemetery and Rest Haven Cemetery. A vote to endorse Chicago's O'Hare expansion plan necessarily puts every religious institution in the State of Illinois (including the churches and religious cemeteries in Downers Grove) at risk from similar unconstitutional assault and destruction.

Conclusion

Based on the information publicly available, a decision as to whether to support Chicago's O'Hare expansion proposal would be simple and straightforward. The OMP will have significant adverse effects on the aviation related economy of the Chicago region by failing to address the capacity and airport congestion issues facing the region — indeed, OMP will make matters worse. Compounding these negative economic impacts are the serious adverse impacts on environmental and public health concerns in the surrounding communities. Finally, endorsement of Chicago's plan necessarily endorses the destruction of important constitutional and statutory guarantees protecting

the Free Exercise of Religion. Given this knowledge, Downers Grove should vote against an endorsement of the Chicago plan.

But much of the information and data relating to OMP remains hidden by Chicago. Chicago refuses to produce the data and evidence which supports Chicago's claims as to capacity, delay reduction, benefits, cost, financing, and environmental impact. Prudence suggests that no decision as to whether community should endorse Chicago's O'Hare expansion plan until all the data and information is open for public review and examination.

The Suburban O'Hare Commission asks the Downers Grove Council to take one of two actions:

1. If the Council feels that the information now available permits a decision on the merits as to whether to endorse Chicago's expansion plan, the Council should deny such endorsement. The available evidence overwhelmingly demonstrates that Chicago's expansion plan is seriously flawed and poses major problems for the regional economy, the environment, and public health. Chicago's expansion plan also tramples important constitutional and statutory guarantees protecting the Free Exercise of Religion.
2. In the alternative, SOC suggests that the Downers Grove Council defer any action on the proposal to endorse the Chicago expansion plan until all the relevant evidence on costs, benefits, and impacts of the Chicago proposal is made available.

Under separate e-mail I am sending you a number of related documents detailing the concerns raised in this memorandum. If you or the Council has questions, please contact me. Thank you and the Council for examining this memorandum and supporting materials.