

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
WARRENVILLE AND THE CITY OF AURORA RE DISCONNECTION
AND ANNEXATION OF CERTAIN TERRITORY (DUKE REALTY)**

THIS AGREEMENT made and entered into this ____ day of _____, 2016, by and between the **CITY OF WARRENVILLE**, DuPage County, Illinois (hereinafter referred to as “Warrenville”), and the **CITY OF AURORA** (hereinafter referred to as “Aurora”).

W I T N E S S E T H:

WHEREAS, Article VII, Section 10 of the Illinois Constitution of 1970 and 5 ILCS 220/1 *et seq.* authorize units of local government to contract or otherwise associate among themselves to obtain or share services, to exercise, combine or transfer any power or function, in any manner not prohibited by law, to use their credit, revenues and other reserves to pay costs and to service debt related to intergovernmental activities; and

WHEREAS, Duke Realty is the owner of a parcel of land located within the corporate limits of Aurora, which parcel of land is legally described on Exhibit 1, attached hereto and made a part hereof (the “Subject Parcel”); and

WHEREAS, Duke Realty has filed a petition pursuant to 65 ILCS 5/7-1-24 to disconnect the Subject Parcel from Aurora; and

WHEREAS, Duke Realty has filed a petition to annex the Subject Parcel to Warrenville pursuant to 65 ILCS 5/7-1-24 and 7-1-8, subject to the disconnection of the Subject Parcel from Aurora; and

WHEREAS, Duke Realty and Warrenville have negotiated an annexation agreement, which would govern the annexation of the Subject Parcel upon its disconnection from Aurora; and

WHEREAS, Aurora is willing to consider disconnection of the Subject Parcel provided that it is able to retain certain rights with respect to the future construction of public improvements on the Subject Parcel, as hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Aurora and Warrenville, it is agreed by and between the parties hereto as follows:

SECTION ONE: The recitals hereinabove set forth are hereby incorporated as findings of fact in this Section One, as if said recitals were fully set forth herein.

SECTION TWO: The term of this Agreement shall be the later of either five (5) years or Aurora's issuance of a Certificate of Occupancy Permit for the first new building constructed on Lot 5 in Butterfield East Unit 3; provided however, Aurora and Warrenville may extend the term of the Agreement upon the mutual consent of their respective corporate authorities.

SECTION THREE: Aurora hereby agrees, within 60 days of the date of this Agreement, to disconnect the Subject Parcel from Aurora, subject to the terms and conditions set forth in Section Five hereof.

SECTION FOUR: Subject to the negotiated terms and conditions of the pending Duke Realty annexation agreement, including the dedication to Warrenville of a portion of the Subject Parcel as public road right-of-way (the "ROW"), the dedicated portion being approximately 90 feet in width as shown on Exhibit 2, Warrenville agrees to annex the Subject Parcel within 60 days of the disconnection of said parcel by Aurora.

SECTION FIVE: Warrenville and Aurora mutually agree that during the term of this Agreement, Aurora shall have the following rights and privileges with respect to development of the ROW for roadway purposes:

(1) Upon 6 months prior written notice to Warrenville, Aurora may improve or cause the ROW to be improved by a developer (or other third party), as a roadway to connect Aurora's easternmost municipal boundary with Illinois Route 59, as visually depicted on Exhibit 3 (the "Aurora Roadway Extension");

(2) The parties recognize that the Aurora Roadway Extension will require the permitting and approval of the Illinois Department of Transportation which will require the modification or elimination of the existing Route 59/Estes Street full access intersection;

(3) The parties acknowledge and agree to jointly use their best efforts and cooperate to secure and then comply with applicable IDOT permitting requirements;

(4) Warrenville agrees that it shall waive any Warrenville permit or inspection fees associated with the design, permitting or construction of the Aurora Roadway Extension;

(5) The Aurora Roadway Extension, if constructed, shall be begun within five (5) years of the date hereof and shall be completed and operational no later six (6) years from the date hereof; and

(6) Upon timely completion of the Aurora Roadway Extension, and any other Aurora public improvements associated therewith, Aurora shall be responsible for the future maintenance of the Aurora Roadway Extension and associated public improvements. In such event, pursuant to 65 ILCS 5/7-1-25, Warrenville shall cause the ROW to be excluded from Warrenville and Aurora shall cause the ROW to be annexed to Aurora.

SECTION SIX: The parties further acknowledge and agree that Warrenville hereby reserves the right to design, permit and install roadway and other public improvements on the ROW (the “Warrenville Roadway Extension”) during the term of this Agreement for the benefit of properties located within the corporate boundaries of Warrenville. Provided, however, in no event shall the Warrenville Roadway Extension extend to a point of connection with the Aurora corporate boundaries. A conceptual drawing of the Warrenville Roadway Extension is attached hereto and made a part hereof as Exhibit 4.

SECTION SEVEN: Should Aurora fail to commence the Aurora Roadway Extension in a timely manner, as provided herein, the ROW shall remain within the corporate boundaries of Warrenville. Warrenville shall be responsible for the future maintenance of the Warrenville Roadway Extension, if Warrenville constructs, or causes the construction of, said Extension.

SECTION EIGHT: In the event that Warrenville has commenced, or has completed, the Warrenville Roadway Extension and if, during the term of this Agreement, Aurora decides to construct, or cause the construction of, the Aurora Roadway Extension to interconnect with, or replace, the Warrenville Roadway Extension (the “Aurora Interconnection”), then Aurora shall be responsible for the maintenance of both Extensions in the manner provided in Section Five (6) above. Should Aurora proceed with the Aurora Interconnection, the parties agree to jointly use their best efforts and cooperate to secure and then comply with applicable IDOT permitting requirements.

SECTION NINE: Should Aurora proceed to construct, or cause the construction of, either the Aurora Roadway Extension or the Aurora Interconnection, Aurora covenants and agrees that existing curb cuts for properties located in Warrenville and intersections between Warrenville

streets and the ROW shall not be affected in any manner whatsoever by said Extension or Interconnection.

SECTION TEN: In the event that Warrenville public improvements include water and/or sewer, notwithstanding anything to the contrary set forth in this Agreement, the water and/or sewer improvements shall remain under the ownership and control of Warrenville and Aurora shall grant Warrenville a perpetual easement for said water and/or sewer improvements located on the ROW.

SECTION ELEVEN: In addition, in the event Aurora decides to proceed with the construction of the Aurora Roadway Extension, Aurora promises and covenants that Aurora, its contractor or third party developer (the "Indemnitor") will fully indemnify and hold Warrenville harmless against and from any and all claims, liabilities, actions, damages, judgments, and costs, including without limitation injury or death to any person and damage to any property or Public Right-of-Way, including attorneys' fees (collectively, "Claims"), that Warrenville may incur or suffer, or that may be obtained against Warrenville, as a result of or related to the Indemnitor's failure to perform any of its obligations under this Agreement, or the Indemnitor's negligent, unlawful, or intentional wrongful acts or omissions that relate to the construction, operation, maintenance, or repair of the Aurora Roadway Extension. Warrenville must give the Indemnitor written notice within 30 calendar days after Warrenville has received written notice of a Claim. Warrenville may tender to the Indemnitor the defense of a Claim, in which case the Indemnitor must defend Warrenville against that Claim, or Warrenville may defend itself against that Claim at the Indemnitor's expense.

SECTION TWELVE: Prior to commencing construction of the Aurora Roadway Extension, Aurora, its contractor or third party developer shall obtain the following insurance coverages with the following minimum limits. The policies of insurance shall name Warrenville as an additional, non-contributory co-insured:

A. Comprehensive General Liability. Comprehensive general liability insurance with coverage written on an “occurrence” or “claims made” basis and with limits no less than: (1) General Aggregate: \$2,000,000; (2) Bodily injury: \$2,000,000 per person, \$2,000,000 per occurrence; and (3) Property Damage: \$2,000,000 per occurrence.

B. Comprehensive Motor Vehicle Liability. Comprehensive motor vehicle liability insurance with a combined single limit of liability for bodily injury and property damage of not less than \$2,000,000 for vehicles owned, non-owned, or rented. The coverage required by this subsection shall include bodily injury and property damage for all motor vehicles that are operated by any employee, subcontractor, or agent of Aurora or third party developer in conjunction with the Aurora Roadway Extension.

C. General Standards for All Insurance. Aurora must provide Warrenville, upon request, with reasonable evidence of insurance and with certificates of insurance for commercial coverage designating Warrenville and its officers, boards, commissions, elected officials, agents, and employees as additional insureds and demonstrating that Aurora is causing the insurance required in this Section to be maintained. Each policy shall provide that no change, modification, or cancellation of any insurance coverage required by this Section shall be effective until the expiration of 30 calendar days after written notice to Warrenville of any such change,

modification, or cancellation and providing that there is no limitation of liability if Warrenville is not notified of a policy cancellation.

SECTION THIRTEEN: This Agreement has been executed in the State of Illinois and will be governed in all respects, including validity, interpretation, and effect, and construed in accordance with, the laws of the State of Illinois. Any court action may be filed only in DuPage County, Illinois.

SECTION FOURTEEN: No provision of this Agreement may be amended or otherwise modified, in whole or in part, except by an instrument in writing duly approved and executed by the corporate authorities of Aurora and Warrenville. Any amendment must be authorized by ordinance.

SECTION FIFTEEN: Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.

SECTION SIXTEEN: Any notice to a party shall be sent by certified mail, return receipt requested, or by personal delivery, at the following addresses:

CITY OF WARRENVILLE

28W701 Stafford Place
Warrenville, IL 60555

Attn: City Administrator

CITY OF AURORA

44 E. Downer Place
Downers Grove, IL 60505

Attn: Corporate Counsel

SECTION SEVENTEEN: This Agreement incorporates the full and complete understanding of the parties to the exclusion of any terms and conditions not expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

CITY OF WARRENVILLE

Mayor

ATTEST:

City Clerk

JM\178455/12/21/15

CITY OF AURORA

Mayor

ATTEST:

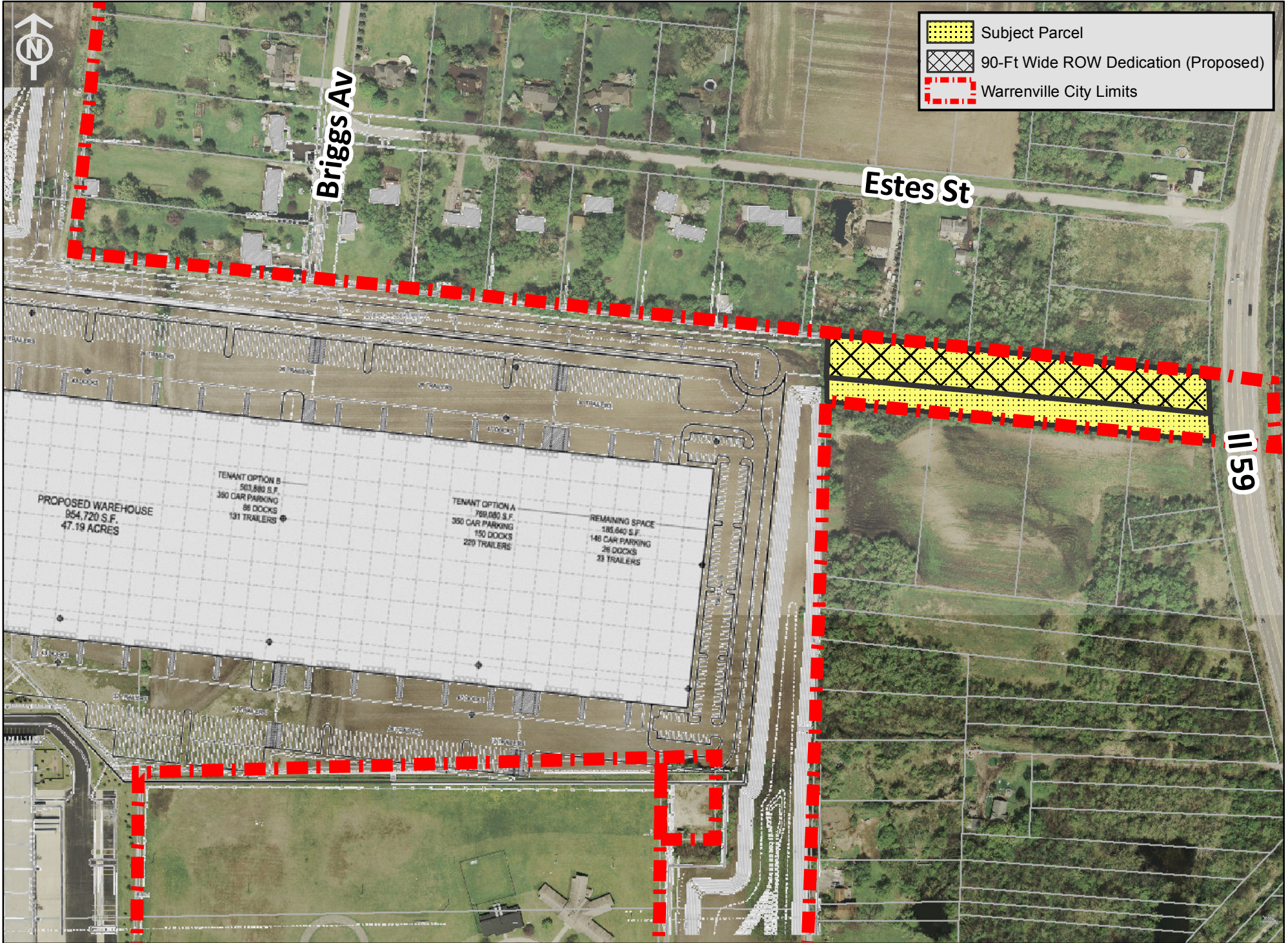
City Clerk

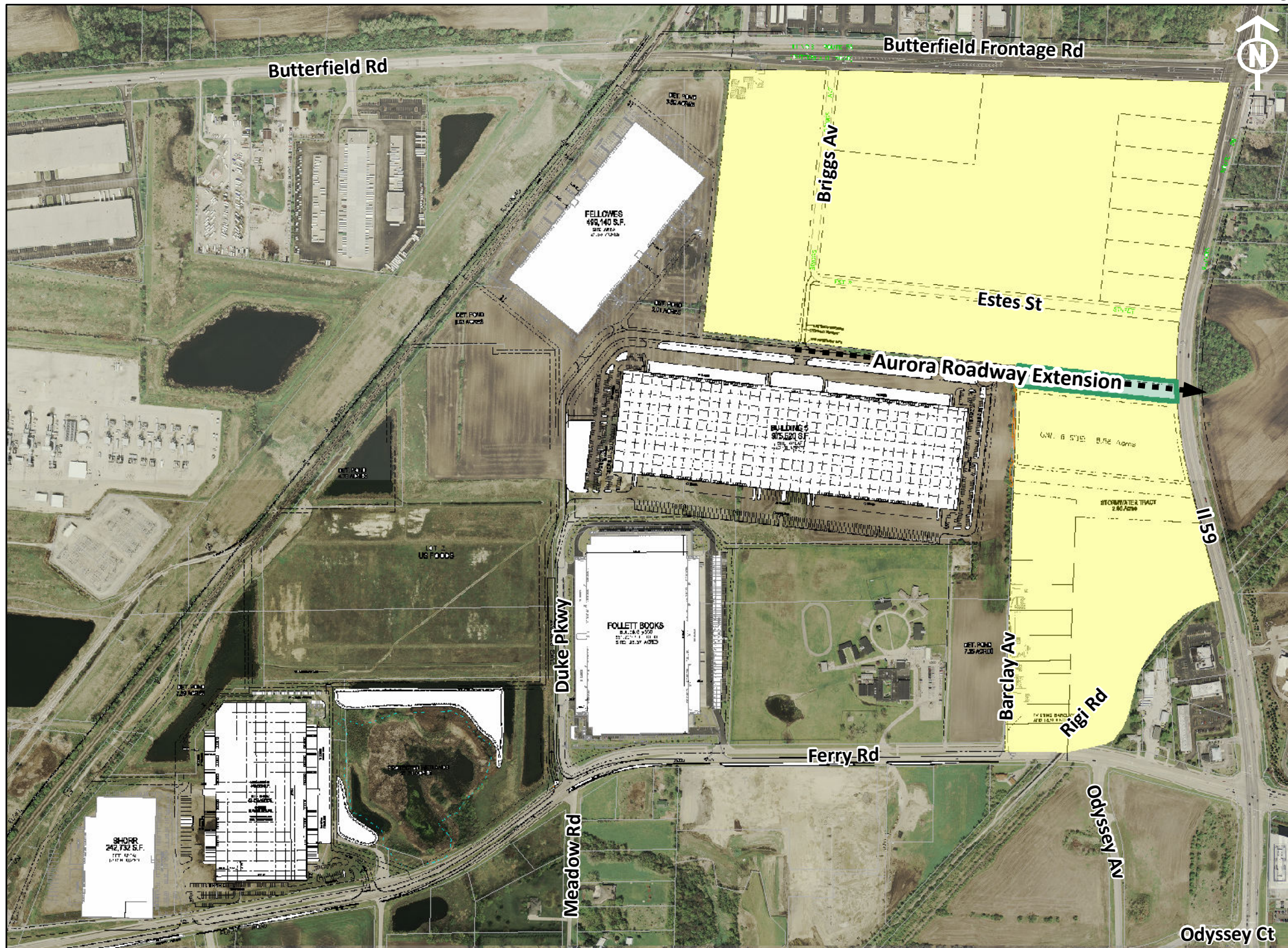
EXHIBIT 1

LEGAL DESCRIPTION FOR SUBJECT PARCEL

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED BY BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF LOT 65 IN ROBERT BARTLETT'S GREEN ACRES SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 454884, WITH THE WEST LINE OF ILLINOIS ROUTE 59; THENCE SOUTHERLY ON SAID WEST LINE 151 FEET, MORE OR LESS, TO THE NORTH LINE OF PARCEL 2 OF THE PLAT OF SURVEY RECORDED AS DOCUMENT 565263; THENCE WESTERLY 846.7 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID PARCEL 2; THENCE NORTH ON THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID PARCEL 2 A DISTANCE OF 149 FEET, MORE OR LESS, TO THE SOUTH LINE OF ROBERT BARTLETT'S GREEN ACRES SUBDIVISION; THENCE EASTERLY ON SAID SOUTH LINE 833.52 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.







Butterfield Rd

Butterfield Frontage Rd

Briggs Av

FELLOWS
499,140 S.F.

Estes St

Aurora Roadway Extension

FOLLETT BOOKS
1,124,570 S.F.

LOT 7
US FOODS

FOLLETT BOOKS
1,124,570 S.F.

1159

Duke Pkwy

Barclay Av

Rigi Rd

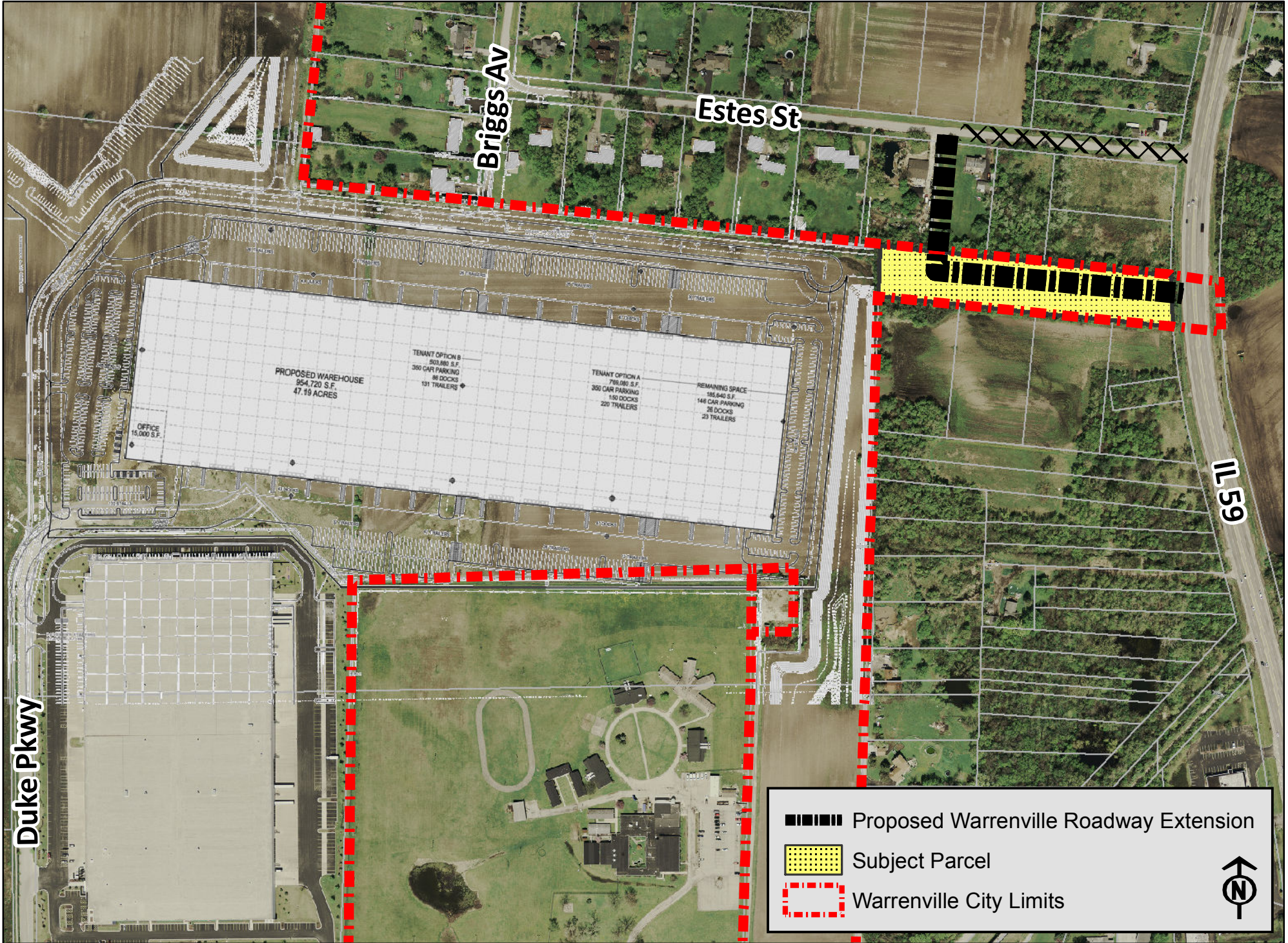
Ferry Rd

Odyssey Av

SHOPPER
242,732 S.F.

Meadow Rd

Odyssey Ct



Duke Pkwy

Briggs Av

Estes St

IL 59

Legend:

- Proposed Warrenville Roadway Extension
- Subject Parcel
- Warrenville City Limits

North Arrow