

## **COMMITTEE OF THE WHOLE - SEPTEMBER 7, 2004**

### **APPLEWOOD CRESCENT EXTENSION – HIGHWAY 400 FLYOVER MTO AGREEMENT**

#### **Recommendation**

The Commissioner of Engineering and Public Works in consultation with the Commissioner of Legal and Administrative Services recommends:

- 1) That the necessary By-law be enacted to authorize the Mayor and City Clerk to execute the Agreement with the Ministry of Transportation (MTO) for the construction of the Applewood Crescent Extension – Highway No. 400 overpass; and
- 2) That the Regional Municipality of York and the Ontario Ministry of Transportation be so advised by copy of Council's direction.

#### **Purpose**

To seek authorization from Council for the Mayor and City Clerk to execute an agreement between the City of Vaughan and the MTO for the construction of the Applewood Crescent Extension – Highway 400 Flyover.

#### **Background - Analysis and Options**

The City of Vaughan will be constructing a link between Chrislea Road and Applewood Crescent with a bridge spanning Highway No. 400. The new road will connect Applewood Crescent with Chrislea Road at a location just East of Northview Boulevard. This improvement is necessary to accommodate growth in the area and the anticipated traffic volumes. Council has previously approved this undertaking and the works were the subject of a Class EA (Environmental Assessment) process completed in 2001. Refer to Attachment No. 1 for Location Map.

The City is currently in the detailed design phase of the project and we expect to call tenders for this work late in 2004. Construction of the bridge and new section of road will begin in the spring of 2005 with completion planned for by the end of 2006.

Staff from the Engineering Department and Legal Services has reviewed the Agreement prepared by the MTO. All comments have been addressed in the latest revision of the Agreement between the MTO and the City of Vaughan. A DRAFT copy of the subject Agreement is appended as Attachment No. 2.

The Agreement permits the City to design and construct the crossing over King's Highway Number 400 including the associated highway improvements and illumination and sets out the terms and conditions governing the undertaking. Upon completion and acceptance of the works by the Regional Director for the Central Region of the Ministry of Transportation for the Province of Ontario, the works will be subject to a two-year warranty period. Upon expiry of the two-year warranty period, the Ministry will thereafter be responsible for any future Intersection and Highway Improvements and/or the Traffic Control System Work (Work), except for the maintenance in the area of the Work contemplated by Section 20(2) of the Public Transportation and Highway Improvement Act (PTHIA).

Section 20(2) of the PTHIA specifies, Crossing highways

“Despite subsection (1), where a highway is carried over or under the King's Highway by a bridge or other structure the surface of the highway shall be deemed to be under the jurisdiction and control of the authority that has

jurisdiction and control over the remainder of the highway and the Crown shall not be liable for maintenance and repair of the surface of the highway. R.S.O. 1990, c. P.50, s. 20.

Upon execution of the Agreement by the Mayor and City Clerk the Agreement is deemed to have been authorized by the MTO for approval to construct. The Minister of Transportation for the Government of Ontario will execute the Agreement at a later date coordinated by the MTO.

### **Relationship to Vaughan Vision 2007**

This project is consistent with Vaughan Vision 2007 in that the extension of Applewood Crescent over Highway 400 to Chrislea Road ensures that growth does not outpace the road network infrastructure (3.2.3) and that, the project incorporates road patterns in Block Plans to provide effective and efficient road and transit networks (3.3.2).

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

### **Conclusion**

That the Mayor and City Clerk be authorized to execute the Agreement between the City of Vaughan and the MTO for the construction of the Applewood Crescent Extension – Highway 400 Flyover.

### **Attachments**

1. Location Map
2. Copy of Agreement between the City of Vaughan and MTO

### **Report prepared by:**

Larry B. Hollett, C.E.T. – Senior Engineering Assistant, ext. 3112  
Tom Ungar, P. Eng. – Design Engineer

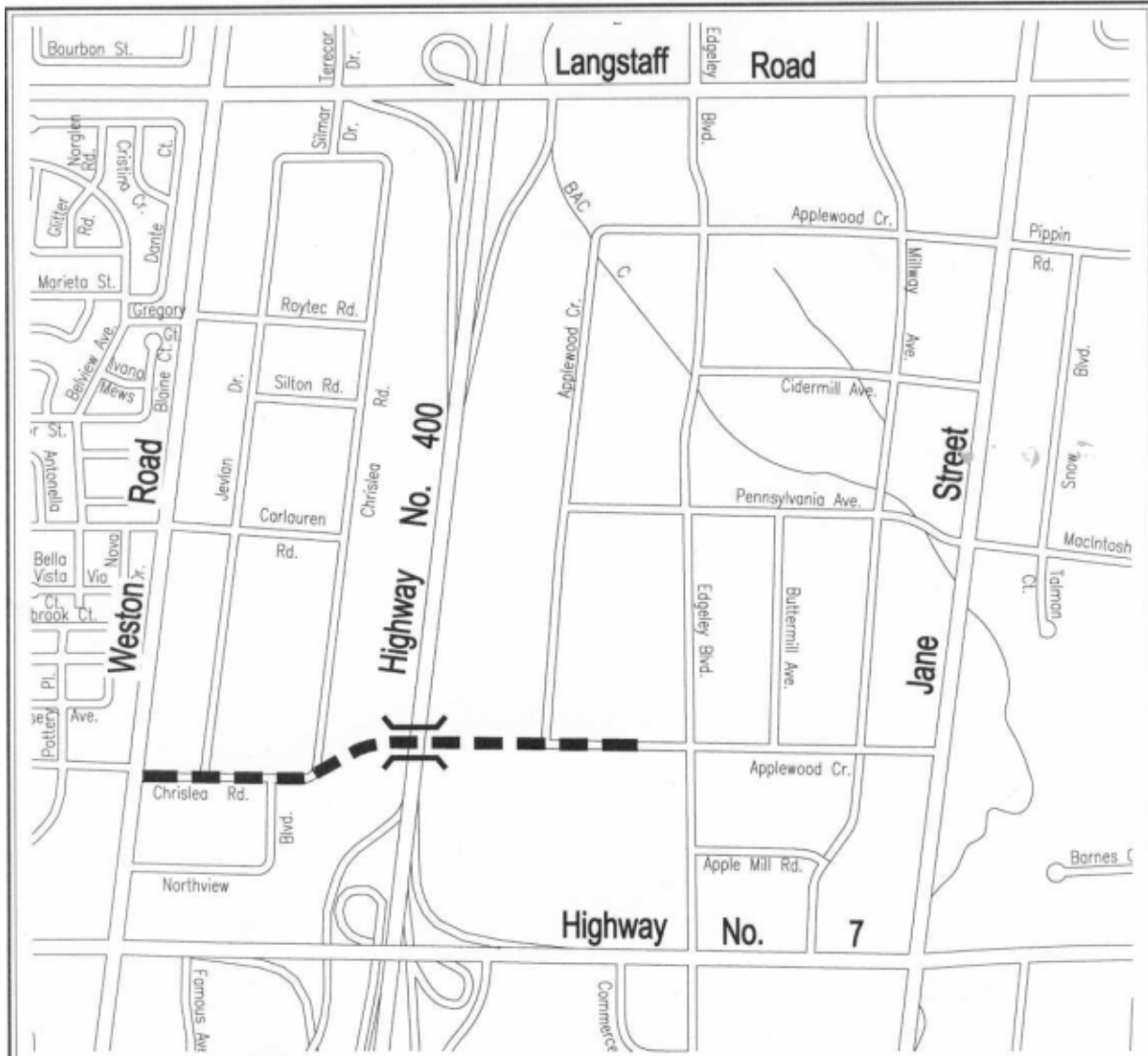
Respectfully submitted,

Bill Robinson, P. Eng.  
Commissioner of Engineering and Public Works

Gary P. Carroll, P. Eng.  
Director of Engineering Services

LBH:mc



# ATTACHMENT No. 1



## APPLEWOOD CRESCENT EXTENSION

LOCATION : Part of Lot 7, Conc. 5

### LEGEND

-  ROAD EXTENSION LOCATION
-  PROPOSED BRIDGE LOCATION



NOT TO SCALE

CITY OF VAUGHAN - ENGINEERING DEPARTMENT

Drawing name: R:\ENGINEERING\BENGSERV\LARRY\Applewood Cr. Extension\Approved\_Ext.dwg

**ATTACHMENT NO. 2**

**BETWEEN:**

**HER MAJESTY THE QUEEN** in  
right of the Province of Ontario  
represented by the Minister of  
Transportation for the Province of  
Ontario,

**The Corporation of the City of  
Vaughan**

("Vaughan"),

Crescent on the east side of Highway 400 and Chrislea Road on the West side of  
Highway 400,

- B. Vaughan proposes to construct an extension of Applewood Crescent which will  
Township of Vaughan in the Region of York (the "Lands");
- C. Vaughan requests and the Ministry agrees to permit Vaughan to construct the  
crossing over King's Highway Number 400 at the location shown on Schedule "A"
- D. Vaughan requests and the Ministry agrees to permit Vaughan to design and  
construct the associated highway improvements (the "Intersection and Highway  
Improvements") and illumination at full cost and expense to Vaughan and upon the

**NOW THEREFORE** in consideration of the premises and the respective covenants  
contained herein, the parties hereto for themselves and their respective successors and  
permitted assigns mutually agree as follows:

1.1 In this Agreement,

- a) "Approval", "Approve", "Approved" and similar expressions means the approval of or approved by the Director in accordance with the provisions of
- b) "CAH" means Controlled Access Highway;
- c) "Director" means the Regional Director for the Central Region of the Ministry of Transportation for the Province of Ontario, or his nominee;
- d) "PTHIA" means the Public Transportation and Highway Improvement Act,
- e) "TRAFFIC CONTROL SYSTEM WORK" means the design and construction of the Traffic Control System at the Intersection; and
- f) "Work" means the Intersection and Highway Improvements and/or the Traffic Control System Work.

2.1 Subject to Section 2.2, upon application:

- a) made by Vaughan to the Ministry in form satisfactory to the Ministry and at  
prepared according to the terms and conditions of this Agreement; and
- c) in compliance with any other applicable provisions of this Agreement,

the Ministry shall issue the Encroachment Permit and Lane Closure Permit (the "Permits") Vaughan requires to construct the Work within the Ministry's jurisdiction.

2.2 No permit shall be issued under Section 2.1 prior to the delivery to the Ministry of

- a) an endorsement of the insurance policy for comprehensive general liability insurance provided for in Section 12.2;
- b) the approval of the Design provided for in Section 5.4;

6.1; and

d) an executed copy of this Agreement.

2.3 Any Permit issued by the Ministry with respect to the Work shall be subject to the Agreement. Any such Permit shall have annotated on it:

*"This permit is subject to the terms of the Agreement dated the  
\_\_\_\_\_ day of \_\_\_\_\_, 2004 between the*

*Ministry of Transportation and the City of Vaughan."*

Where there is a conflict between the Agreement and the terms and conditions contained in any Permit issued to Vaughan by the Ministry for the Work, the terms and conditions contained in the Permit shall govern.

2.5 Notwithstanding Section 2.4, where emergency work must be carried out by Vaughan on the highway right-of-way in order to protect the travelling public and/or preserve

### 3.0 MINISTRY APPROVALS

3.1 Wherever the provisions of this Agreement require or provide for the Director's (an "Approval"), such request for Approval shall be in writing and shall:

- a) contain or be accompanied by any documentation or information required for such Approval;
- b) clearly set forth the matter in respect of which such Approval is being sought;

Approval; and

- d) clearly state that such Approval is being sought.

4.0 **MINISTRY DIRECTIONS**

4.1 The Director may give such directions and orders, in writing, to Vaughan with respect to the performance of the Work as he deems necessary, and Vaughan shall carry out such directions and orders forthwith upon receipt of same.

5.1 Vaughan shall design and prepare, according to Ministry specifications and standards, the contract drawings and documents for the Intersection and Highway Improvements, and in conjunction therewith, include:

standards;

- b) provisions for the conveyance and treatment of storm water from Applewood Crescent and lands upstream, without causing negative impacts to the highway
- d) the preservation and arrangements for relocation of all Ministry, Canadian TODS, and LOGO signs, including their supports, and the supply and installation of any new signs, including their supports, indicated on the Approved plans, in accordance with the Manual of Uniform Traffic Control Signing Policy Manual;
- e) the placing of concrete, hot mix asphalt paving, granular materials and barriers to comply with Ministry requirements;

construction of the Work;

- g) the concrete curb and gutter;
- h) the removal of existing pavement markings and placing of temporary and permanent pavement markings required within the limits of construction of the Uniform Traffic Control Devices and shall be subject to the approval of the Ministry's Traffic Management Office and the markings shall be subject to field checking and the Approval of the Director; and
- i) any additional work required to meet provincial highway requirements as

5.2 Vaughan, as proponent, shall comply with the *Environmental Assessment Act*, R.S.O. 1990, c.E.18, as amended and, if applicable, the Municipal Class Environmental Assessment process and obtain from the Ministry of the Environment, as well as the

5.3 It is deemed expedient under Sections 2 and 34(16) of the PTHIA to enter into this Agreement to further the construction and incidentals of the Intersection and Highway Improvements, by Vaughan with all design and construction costs inside and incidental

5.4 The contract drawings shall be sealed and stamped by a Professional Engineer of Ontario. Vaughan shall submit the contract drawings and documents to the Director for his Approval.

#### 6.0 TRAFFIC CONTROL PLAN

6.1 Vaughan shall, at its cost and expense, prepare a plan for traffic control (the "Plan") prior to construction of the Work. The Plan is to be prepared in accordance with the



Manual, the Ministry's Roadside Safety Manual, the Central Region Lane Closure Permit Application & Right of Way Usage Notification Protocol, and other Ministry standards and procedures, and the Plan is subject to the Director's Approval. The Plan shall:

- b) provide that any aspect of the Work, once started, must be completed within the same construction year, being not later than December 31st of that calendar year;
- c) provide that the existing traffic lanes must be open to traffic at the end of each
- d) provide that an open excavation adjacent to the highway must be backfilled and compacted to grade by the end of each working day.

6.2 Vaughan shall be fully responsible for traffic control and safety during construction of and warning signs that the Ministry requires, which shall be carried out in accordance with the Manual of Uniform Traffic Control Devices.

#### 7. THE WORK

7.1 The permission and Approvals granted, and directions and orders issued, herein are subject to the right of free use of Highway 400 by the public and are subject also to the rights and privileges which the Director may grant to any other persons on Highway 400 all of which rights are expressly reserved.

7.2 Notwithstanding the permission and Approval granted, and directions and orders issued, herein Vaughan shall not cut, trim or interfere with any trees on Highway 400 without Approval from the Ministry of Transportation.

pursuant to the provisions of the PTHIA, and Vaughan shall be responsible for obtaining all authorizations required from any other authority in order to carry out any part of the Work.

the Work where the Ministry, acting reasonably, determines that there are risks or conflicts to the travelling public or any other person using the highway right of way and/or to construction work that must be carried on by the Ministry, or to any contractor hired by the Ministry, on the highway right of way.

7.3 Vaughan shall be responsible for the relocation of any aerial and buried utilities, which in the opinion of the Director, is required by reason of the Work. Any relocation of utilities shall be to a new Approved location;

Work. Vaughan also agrees that the Ministry's contractors will be recognised as the senior contractors. Vaughan further agrees that any construction activities of Vaughan's and the Ministry's respective contractors in the area of the Work will be coordinated through the senior contractors and that any conflicts in the various

7.7 Vaughan shall:

- a) tender the contract for the construction of the Work;
- b) only execute the contract with a contractor fully qualified under the Ministry's
- c) submit to the Ministry prior to the start of construction, the details of the contract including schedules and traffic staging proposals, for Approval, which Approval may be given in stages concurrent with the plans submitted;

and Safety Act, R.S.O. 1990, c.O.1, as amended, and any applicable legislation and industry standards;

- e) not allow any track vehicle on the highway pavement;
- f) maintain right of way fences at all times;
- n) submit an operation plan to the Ministry for approval, this plan will contain Vaughan's normal practices for unloading material, anticipated hours of work, and all other related information which may be required by the Ministry;
- i) ensure any large equipment or material left on the highway right of way is
- j) notify the Ministry seven (7) business days prior to commencing any Work, unless otherwise indicated in this Agreement or a Permit;
- k) within seven (7) days of completion of any Work, restore the site to a neat and tidy condition to the Ministry's satisfaction:  
blasting operations;
- m) co-ordinate the operations relating to the Work so that interference with any Ministry activities is minimised;
- n) protect the Work during its construction activities from any Ministry
- o) be responsible for the relocation of any aerial and buried utilities which, in the opinion of the Director, is required by reason of the Work. Any relocation of utilities shall be to a new Approved location and each relocation shall be subject to a separate Encroachment Permit;
- q) maintain proper drainage at all times. Any contaminated material should be removed and the same replaced with approved material to the satisfaction of the Ministry's representatives; and

settlement as a result of installation must be remedied.

7.8 Vaughan shall complete the Work in compliance with the Approved drawings and documents.

8.0 **QUALITY ASSURANCE**

8.1 Vaughan shall:

- a) be responsible for quality assurance in accordance with Ministry standards and (the "Proposal") prior to construction of the Work, and Vaughan shall submit the Proposal to the Director for Approval;
- c) hire a qualified engineering consulting firm that is approved for work on Ministry, records pertaining to the inspection of materials and workmanship and, when requested, make the records available for Ministry review and inspection;
- d) supervise and direct construction of the Work to the extent necessary to ensure drawings, documents and plans; and
- e) decide all questions relating to the Work in compliance with the terms and conditions of this Agreement.

All books and records made pursuant to this Agreement shall be subject to inspection and audit for a period of six (6) years following the completion of the Work. Vaughan shall accommodate audits at the discretion of the Ministry and on one (1) business day's notice.

the performance by Vaughan of this Agreement. In the event of any discrepancy between the Ministry's test results and those of Vaughan, the Ministry's results shall govern.

9.1 Vaughan shall not authorize the Work to commence until it has:

- a) received an executed copy of this Agreement;
- b) received all Permits and Approvals from the Ministry;
- c) given the Ministry written notice at least seven (7) business days prior to commencement of the construction of the Work, after having received the Permits and Approvals, as required herein, from the Ministry.

10.1 When, in the opinion of Vaughan, the Work constructed under the Permits has been satisfactorily performed, and all money owed by Vaughan or the Contractor for Vaughan has been paid in full, and no lien has been filed in respect of the Work, Vaughan shall submit written notice to the Director in the form of a letter as set out in and if the Director finds the Work has been satisfactorily completed in accordance with the Approved contract drawings and documents, the Director shall give written notice

that the Work is accepted, and:

- a) a two (2) year warranty period on all of the Work will begin on the date that repair, at no cost or obligation to the Ministry, any and all defects to the work that arise during the two year period; and
- b) upon the expiry of the two year warranty period, the Ministry will thereafter be responsible for the Work, except for the maintenance in the area of the Work

responsible.

10.2 Vaughan shall deposit with the Ministry both a hard copy and an electronic version of the plans in a format acceptable to the Ministry and approved by a Professional completion within ninety (90) days of the Director's acceptance provided pursuant to Section 10.1.

10.3 Vaughan shall prepare and deposit a plan of survey for any parts of the structure that

#### 11.0 RISKS, INDEMNITY AND LIABILITY

11.1 Vaughan shall indemnify and save the Ministry harmless from and against all claims, damages, costs and expenses, including reasonable attorneys' fees, for personal injury in any manner arising due to, out of, from or in connection with the Work undertaken and performed by Vaughan, their agents or contractors under this Agreement, except for work negligently performed by the Ministry.

attributing vicarious liability to the Ministry, all Ministry contractors shall be deemed to be agents of the Ministry and thereby beneficiaries under these Sections.

#### 12.0 LIABILITY INSURANCE

accordance with the terms set out under this Section to protect and support the indemnification provisions set out under Article 11.

and indemnifying Vaughan and the Ministry from and against all claims for damage or injury to persons, including loss of life to persons, occurring on lands affected by the Work from the time of application for the Permits pursuant to Section 2.1 until the Director gives Vaughan notice that the Work is completed, and:  
(\$5,000,000.00), in respect of bodily injury or death of any one person in any one occurrence;

- b) the insurance shall be maintained with a company or companies licensed to do business in the Province of Ontario and approved by the Ministry;  
from time to time appeal,
- d) the Ministry shall be named as an additional insured;
- e) the policy shall contain a cross-liability clause endorsement;
- f) the insurance shall not be subject to cancellation, without reasonable notice to the insurance company prior to the issuance of the Permits.

### 13.0 DEFAULTS, REMEDIES AND TERMINATION

- a) failing to implement the Approved design or construction of the Intersection and Highway Improvements in accordance with this Agreement to the satisfaction of the Ministry;
  - b) failing to make, on demand of the Ministry, any payment or payments required
  - c) failing to do any act, matter or thing required to be done under this Agreement;
- or,
- d) becoming bankrupt, insolvent or subject to an execution in excess of one hundred thousand dollars (\$100,000.00),

contractor to the satisfaction of the Director. The Ministry may then employ any means the Ministry deems necessary to do or complete any or all of the Work and Vaughan shall have no claim against the Ministry for loss or damage caused by or resulting from any or all of the Work being taken out of the control of Vaughan. Vaughan shall be responsible for all costs of the Work.

be necessary to perform or complete the work.

- 13.3 Nothing in Section 13.1 is to be construed as placing an obligation on the Ministry to complete, in whole or in part, the Work.

*Construction Lien Act*, R.S.O. 1990, c.C.30, as amended, Vaughan at the cost of Vaughan shall resolve the lien.

14.0 PERMANENT ROAD NAME SIGNS AND REGULATORY SIGNS

- 14.1 Vaughan, at its own cost, shall be fully responsible for the cost of designing, supplying and installing permanent road name signs and regulatory signs. The design, supply and installation of the signs must be in accordance with the Ministry standards and specifications and in accordance with the King's Highway Guide Signing Policy the Ministry's Provincial Sign Shop.

- 14.2 Vaughan shall also be fully responsible for the cost of relocating any Tourism Oriented Destination Signs (TODS) as a result of the construction of the Work.



15.1 This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada.

16.1 Where there is a conflict between this Agreement and the terms and conditions of other agreements that Vaughan may have entered into with another party pertaining to the Work, including with a contractor or contractors, this Agreement governs.

17.0 NOTICES

17.1 Any notices to be given under the provisions of this Agreement shall be in writing and shall be given by personal delivery, or sent by facsimile (as further specified below), or

The Ministry: Mr. Lou Politano, P.Eng.  
Manager, Highway Engineering Office  
Ministry of Transportation  
4<sup>th</sup> Floor, Building "D"  
1201 Wilson Avenue  
Downsview, Ontario M3M 1J8

Vaughan: Mr. Gary P. Carroll, P. Eng.  
Director of Engineering Services  
City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan, Ontario L6A 1T1

Such notices, shall be deemed to have been received by the party to whom it is mailed on the third business day following the posting, or on the day of delivery if provided by personal delivery, facsimile or courier. Such communication may be delivered by

delivery, courier or mailing the original documents so sent by prepaid mail on the same or following day, in which event it shall be deemed to have been given and received on the day that it was transmitted. Provided that if an above day deemed for receipt is not a business day, such notice or other communication shall be deemed to have been shall not be delivered by facsimile or other similar means of electronic communications.

**18.0 REPRESENTATIVE**

provide the Ministry with the name of an official of Vaughan who may be contacted with respect to any of the Work being carried out.

**19.0 TIME OF THE ESSENCE**

19.1 Time is of the essence of every provision of this Agreement.

**20.0 CORPORATE AUTHORITY**

laws and obtained all approvals within their power legally required to give them the authority to enter into this Agreement and do the Work, maintenance and repair stated herein.

21.1 There shall be no assignment of any part of this Agreement by Vaughan without the express written consent of the Director.

their respective successors and permitted assigns.

hereunto set his hand and Vaughan have hereunto affixed their corporate seals under the hands  
of their proper officers duly authorized in that behalf.

\_\_\_\_\_  
MINISTER OF TRANSPORTATION (ONTARIO)

SIGNED AND SEALED this      day of      , 2004

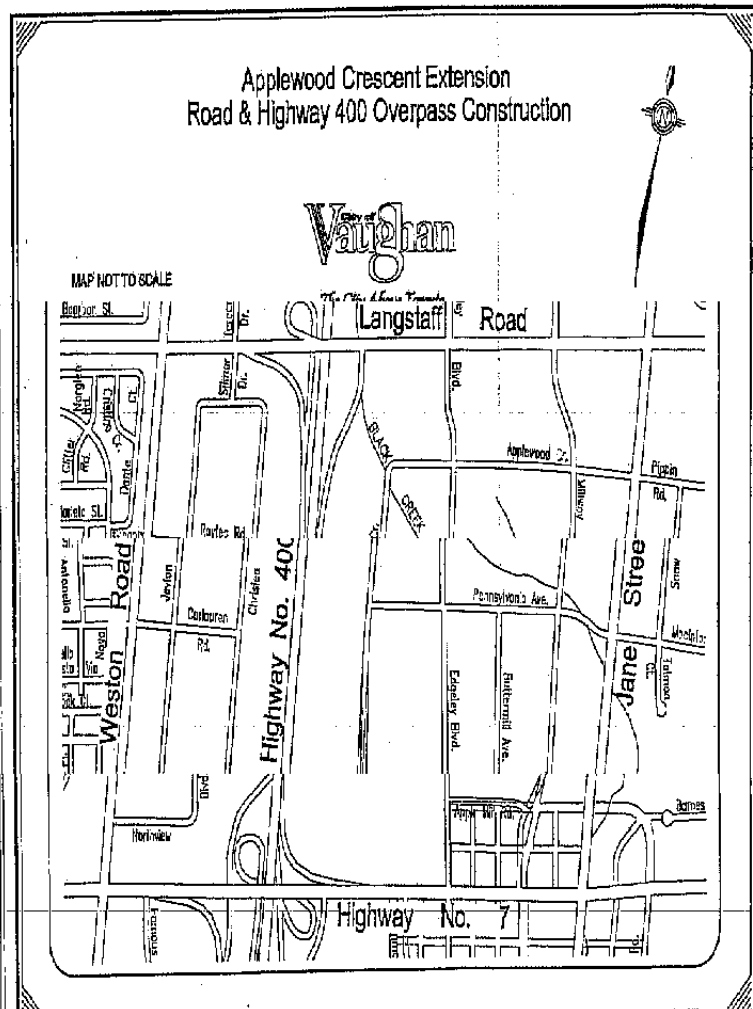
The Corporation of the City of Vaughan

\_\_\_\_\_  
Michael Di Biase, Mayor

\_\_\_\_\_  
J. D. Leach, Clerk

PROJECT No. : 1421.3

FUNDING YEAR: 2004



To:  
Regional Director (the date)  
Ministry of Transportation

Re: Section 10.1 under an Agreement made the day of , 2004 as to the Work.

The Work is located inside and adjacent to the corridor limits of Highway 400 of the Ministry, and is in the area of Lots 7, Concession 5, in the Geographic Township of Vaughan in the Regional Municipality of York.

The Work has been constructed to completion under (and in compliance with):  
the terms of the Agreement,  
the standards and specifications of the MTO, and  
the Approvals under Section 3.1,  
by Vaughan as provided for under the Agreement; and,

Without limiting item 1:  
as provided for under the Agreement.

Vaughan requests a site meeting for the acceptance of the Work by the MTO pursuant to Section 10.1 of the Agreement.

name:  
address:

, P. Eng for Contract Administrator for the Company

name:  
company:  
address: