

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**ALBERTA TRANSPORTATION**

**AND**

**WHEATLAND COUNTY**

**FOR THE**

**FOR INSTALLATION OF PARTIAL HIGHWAY LIGHTING  
AT THE INTERSECTON OF HIGHWAY 817 & HIGHWAY 901 (INT# 2041)**

**CON0021310**

**MEMORANDUM OF AGREEMENT** signed this                      day of                      2020                      A.D.

**BETWEEN:**

**HER MAJESTY THE QUEEN** in right of  
Alberta, as represented by the Minister of  
Transportation (the "Province")

**OF THE FIRST PART**

- and -

**WHEATLAND COUNTY** in the Province of  
Alberta (the "Municipality")

**OF THE SECOND PART**

The Province and the Municipality are desirous of the design and construction of partial highway lighting at the intersection of Highway 817 & Highway 901 (Int# 2041) as shown in the plan attached as Schedule "A" to this Agreement (the "**Project**");

Ownership of the Highway is vested in the Crown in right of Alberta;

The Province, pursuant to the Highway Development and Protect Act, R.S.A. 2004, c. H-8.5, has title to, and direction, control, and management of all Provincial Highways;

Section 10 of the Government Organization Act, the Province may enter into agreements on or in connection with any matter under the Province's administration including agreements for the construction of highways;

The Province, as a condition to the use of Provincial funds for the construction of the Project, deems it necessary to enter into an agreement with the Municipality to ensure the preservation and protection of the Highway.

The Province and the Municipality have agreed to share the cost of the Project in the proportions as set out in Schedule "B" – Estimated Schedule of Costs, attached to and forming a part of this Agreement;

The Province and the Municipality have agreed that the designs, plans and specifications for the Project will be completed in accordance with the Province's current Standard Specifications for Highway Construction and Specifications for Bridge Construction (the "Specifications"), and in accordance with the Province's current Engineering Consultant Guidelines for Highway and Bridge Projects (the "Guidelines");

The Municipality agrees that the Province will retain sole ownership, direction, management and control of the Highway once the highway lighting upgrades are complete; and

The Municipality and the Province agree that the Province will be responsible for the future care, control, maintenance, repairs, replacements and upgrades and all costs thereof of the Highway without further contributions or levies from the Municipality.

In consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. The preamble form part of this Agreement.

### **Definitions**

2. In this Agreement, the following terms have the meanings ascribed to them:

"Business Day" means Monday to Friday, excluding statutory holidays observed in the Province of Alberta

"Costs" means all of the actual dollar amounts invoiced to the Municipality by the third party independent consultants and third party independent contractors responsible for the design and construction of the Project in accordance with this Agreement for:

- (a) any and all of the construction and design activities necessary to design and construct the Project in accordance with the Plans, Specifications, Guidelines and this Agreement; plus
- (b) the actual funds paid for other construction and design activities in excess of those required by the Plans and Specifications but that are agreed to, in writing, by the Parties to this Agreement; plus

(c) any applicable costs for utility adjustments and extra right-of-way acquisition;

“Date of Acceptance” means the date on the letter from the Municipality to the Contractor accepting the Project as completed;

“Engineering Consultant” means the professional engineer or engineering consulting firm registered and licensed to practice in the Province of Alberta that has been retained by the Municipality for all engineering works and to administer the construction contract for the Project.

“Invoice” means a list of Costs incurred in the design and construction of the Project provided by the Municipality to the Province.

“Party” or “Parties” means either of both of the Province and the Municipality, as the context requires.

“Final Tender Documents” means those documents including, but not limited to, tender documents, construction drawings, engineering designs, specifications, response forms, for use in preparing bids for the engineering and construction, as applicable, of the Project.

### **Project Funding**

3. The Parties agree to contribute to funding the Project as follows:
  - (a) The Province and Wheatland County agree to each pay 50% of all the Costs associated with the Project to a maximum of \$60,000.00 as shown in Schedule “B”- Schedule of Costs, attached to this Agreement and forming part of this Agreement. The Province certifies that the goods and/or services ordered/purchased are being purchased by Alberta Transportation which is part of the Crown in Right of Alberta and are therefore not subject to the Goods and Services Tax;

## **Municipality's Responsibilities**

4. The Municipality is responsible for and will:
  - (a) design and construct the Project;
  - (b) administer the calling of a publicly advertised tender for the purpose of awarding a contract for the Project,
  - (c) include a term in the tender indicating that the Municipality will withhold at least ten (10) percent of all monies owing to the successful bidder ("Contractor") awarded the contract for the Project ("Contract") until the Project work is accepted by the Municipality;
  - (d) include a term regarding the security that will be required from the Contractor as further described in clause 4(g);
  - (e) award the Contract to the bidder with the lowest priced compliant tender;
  - (f) before awarding the Contract the Municipality will submit to the Province for information the Municipality's recommendations respecting such awarding together with details of the tenders received;
  - (g) obtain from the Contractor, security in the amount of:
    - (i) 50% of the contract tender price for the due performance of the contract including the applicable Contractor's warranty period; and
    - (ii) 50% of the contract tender price for the payment in full of all claims for labour and for material used or reasonably required for use in the performance of the Contract.

- (h) utilize its own employees for general administration of this Project;
- (i) utilize an Engineering Consultant, for the design including preparation of the plans and specifications and for the quality control activities and supervision of the contract during construction;
- (j) ensure that the Engineering Consultant, adheres to the Province's current "Engineering Consultant Guidelines For Highway and Bridge Projects" manual at all times during the completion of the Project; and
- (k) utilize for all phases and stages of the project, competent contractors and tradespersons experienced and skilled in the performance of the work to be undertaken, including specialist railway contractors as may be required.
- (l) comply with the provisions of all laws, acts, regulations or other requirements, now in force or in force after the signing of this Agreement, that expressly or by their implication apply to the Municipality in fulfilling its responsibilities set out in this Agreement, including but not limited to:
  - (i) Obtaining a Roadside Development Permit for all work to be carried out within the Highway Right of Way prior to the commencement of any work and conforming to any and all terms or conditions arising therefrom including but not limited to the provisions of a Traffic Accommodation Strategy in accordance with an Alberta Transportation's *Traffic Accommodation in Work Zones 2018 (2nd Edition)*;
  - (ii) Obtaining any environmental approvals or permits required by statute for the design and construction of the Project and developing an Environmental Construction Operations Plan ("ECO Plan") ECO Plan in accordance with Alberta Transportation's Environmental Construction Operations ECO Plan Framework, 2017 Edition;
  - (iii) The costs of complying with the requirements in clauses 4(1)(i) and (ii) may constitute Costs under the terms of the agreement upon review and acceptance from the Province, and if accepted by the Province may be submitted as such;

- (m) satisfy itself that the Costs proposed and submitted by the Engineering Consultant for its services in relation to the Project are considered fair and reasonable;
- (n) provide quantity and quality control information and test results for the Project to the Province on a monthly basis, if any;
- (o) provide the Province with contract final details, and "as built" drawings on completion of construction of the Project; (PDF and Microstation format)
- (p) schedule the work to be completed by March 31, 2021;
- (q) provide the Province with a copy of the Municipality's letter to the Contractor accepting the Project as completed; and
- (r) submit its final Invoice to the Province for all work under this Agreement within 120 days of the Date of Acceptance, after which the Province will accept no further Invoices.

### **Cost and Invoices**

5. The Parties agree that:

- (a) Costs incurred for this Project will be based on contract unit bid prices and actual quantities utilized, and in addition will include the actual detailed Costs incurred for engineering and other approved items directly related to the construction, to the maximum amounts shown in Schedule "B"; and
- (b) in the event that the Costs associated with the Project total less than as estimated in Schedule "B", payment will be made only for the actual amounts properly incurred;
- (c) in the event the tendered Costs associated with the Project are above the maximum amount, upon approval by the Province the funding allocation identified in Schedule "B", will be adjusted by amending this Agreement to reflect the true construction Costs; and

- (d) the Municipality will provide written notice and advise the Province of anticipated Costs in excess of the amount for each item shown in Schedule "B" immediately upon becoming aware of the potential increases. If the Parties agree to the increased Costs the Parties will amend Schedule "B" accordingly; and
- (e) the Municipality will receive from the suppliers and contractors, progress and other billings for Costs in accordance with clause 5(a) for the Project. The Municipality will confirm those costs that are eligible Costs of the Project in the manner satisfactory to the Province. The Municipality will render to the Province at the end of each month an Invoice, with sufficient detail and explanation, equal to the sum of the progress and other billings received during that month, if any, less Goods and Services Tax billed by suppliers; and
- (f) the Province upon receipt each month of the Invoice from the Municipality for duration of the Project, will pay such Invoice (if eligible Costs) within 60 days of the Municipality submitting such Invoice, and, in accordance with clause 4(r), will pay the final Invoice when the Project is completed and inspected. Invoices may be submitted either:
  - i) to reimburse the Municipality for the amount of the billing already paid to the Contractor and Consultant by the Municipality; or,
  - ii) to pay the amount of the billing to the Municipality from the Contractor and Consultant for the goods and/or services ordered/purchased in relation to the Project; and
- (g) the Municipality will pay all progress and other billings, inclusive of any applicable taxes.

### **Right to Inspect**

6. The Province shall have the right at all times to inspect the cost records of the Municipality, the work specified in this document, and any and all materials supplied or used in connection with this Project, and shall have the right to require any modification or alteration to the Project to ensure its completion in accordance with the Province's standard and specification. If the Province, acting reasonably, observes or becomes aware of any deficiencies during the construction, including the warranty period, the Province will inform the Municipality, and the Municipality will, pursuant to the terms of the Contract, enforce any and all obligations of the Contractor to rectify such deficiencies.



### **Highway Use After Project Completed**

7. (a) On or before the Date of Acceptance , the Municipality will ensure all equipment, materials, barriers and anything brought onto the Project site that is not part of the Project is removed to allow free and complete use of the Highway.
- (b) Upon completion of the Project, the Municipality shall allow free and complete use of the Highway to and by any lawfully licensed vehicle operated in accordance with the Traffic Safety Act, RSA 2000 c. T-06 and the regulations made pursuant to the Traffic Safety Act.

### **Safety Obligations**

8. Obligation to Ensure Safety
  - (a) The Municipality is responsible for safety in relation to the Project.
  - (b) Without restricting the generality of the Municipality's responsibility for safety, the Municipality shall ensure that:
    - (i) the Project work is designed and engineered to be safe;
    - (ii) the safety of workers and the public are given paramount concern;
    - (iii) all reasonable steps are taken to prevent unauthorized persons from entering any part of the area under construction or being used in the construction;
    - (iv) appropriate warning signs and barriers are placed, monitored and maintained at the site of any construction work and equipment storage areas; and
    - (v) the Municipality complies with any additional measures in relation to safety as may be directed by or on behalf of the Province.

- (c) The Municipality shall ensure that any Contractor or Subcontractor with any involvement in the Works has and maintains a “Certificate of Recognition” recognized by Alberta Human Resources and Employment, Workplace Health and Safety.
- (d) The Municipality acknowledges that a Contractor or Subcontractor does not comply with the obligation in 8(c) if the Contractor or Subcontractor holds and maintains a Small Employers Certificate of Recognition (for employers with less than 10 employees).
- (e) The Municipality shall ensure that each Engineering Consultant, Contractor and each Subcontractor engaged in relation to the Project, complies with the requirements of the Workers Compensation Act, RSA 2000, c. W-15 and the Occupational Health and Safety Act, RSA 2000, c. O-2.
- (f) Occupational Health and Safety
  - (i) The Province assigns prime contractor responsibilities, as specified in the Occupational Health and Safety Act, to all parties with which it enters into contracts and agreements, including but not limited to various utility companies.
  - (ii) During the course of the project, the work sites of the Contractor, the Consultant and the various utility companies may be separated by time and/or space or may be in the same general vicinity or may be adjacent, depending on the circumstances on the project at any given point in time. It is a requirement of all of the Province's contracts and agreements that the Contractor, Consultant and utility companies working within the project limits of the Project, coordinate their respective activities, as outlined herein, to ensure a safe project. However, it is not the Province's intent that any of these parties be responsible to ensure that the other parties, or the other parties' subcontractors, have adequate health and safety process for their respective activities.

(iii) Designation of Prime Contractor

The Municipality shall familiarize itself, its staff and its subcontractors with the terms of the Occupational Health and Safety Act and Regulations thereunder to ensure complete understanding respecting the responsibilities given and compliance required. The Municipality acknowledges that it assumes all of the responsibilities and duties of the Prime Contractor, as defined by the Occupational Health and Safety Act, and that it shall as a condition of this Agreement, comply with the Occupational Health and Safety Act and the regulations thereunder.

(iv) Coordinating Activities

The Municipality shall coordinate its activities on the project with those of any utility companies performing work within the project limits of the Project. When any or all of the Consultant, Contractor and a utility company is conducting activities within the project limits of the Project, the Municipality shall ensure that either or both of Consultant and the Contractor, as the case may be, shall liaise with any utility companies performing work within the project limits of the Project and jointly develop a health and safety system or process for the affected worksites. The health and safety system or process agreed to by the parties must be in writing. Any changes required to the health and safety system must be agreed to by all affected parties and must also be in writing. Documenting the written health and safety system or process, including any required changes shall be the responsibility of the Municipality.

For the purposes of coordinating activities on highway/bridge construction within the project limits of the Project, the contact persons for the Contractor, Consultant and utility companies shall be identified at the pre-construction meeting for the Project. The responsibility to initiate "contact" for coordinating activities shall reside with the party entering a project or site on which work has commenced. This responsibility to initiate contact shall apply regardless of whether or not the worksites are separated by time and/or space, are in the same general vicinity or are adjacent.

(v) Resolving Disputes Related to Coordination of Activities

If any or all of the Consultant, Contractor and a utility company is conducting activities within the project limits of the Project cannot agree on a process or system that addresses the safety concerns of all parties, work at the affected worksites shall cease and this matter shall be referred to the Province. The Province, after review, will decide which party shall be responsible for resolving the disputed safety issue. Such decision shall be final and binding upon all parties.

(vi) Responsibility for Subcontractors/Owner operators

The Prime Contractor shall, to the extent required by the Occupational Health and Safety Act, establish and maintain a Health and Safety system or process to ensure compliance to the Act by his subcontractors/owner operators.

- (g) The Province acknowledges that the Municipality may enter into an agreement with a Contractor to assist the Municipality in meeting all of its obligations as the prime contractor; however, the Municipality acknowledges that the Province shall continue to look to the Municipality to fulfill or cause all obligations under the Occupational Health and Safety Act, RSA 2000, c O-2 to be fulfilled despite this agreement with the Contractor.

9. Hold Harmless

- (a) The Municipality shall indemnify and save harmless the Province, its employees and agents from any third party claims, demands, actions, , expenses and costs whatsoever (including legal costs on a solicitor-client basis), that may arise directly or indirectly out of any act or omission of the Municipality, its employees, agents, contractors, the Consultants or the Consultant's employees with respect to the tendering and awarding, design, installation, construction, testing or completion of the Project or out of the Municipality's breach of this Agreement.
- (b) The Municipality shall indemnify and hold harmless the Province against and from any loss or damage to the real or personal property of the Province that may arise directly or indirectly out of any act or omission of the Municipality, its employees, agents, contractors, the Consultants or the Consultant's employees

with respect to the tendering and awarding, design, installation, construction, testing or completion of the Project or out of the Municipality's breach of this Agreement.

- (c) These indemnification provisions shall survive the termination or expiry of this Agreement.

## **Insurance**

10 (a) Without limiting its obligations or liabilities under this Agreement the Municipality shall obtain and maintain until the end of the warranty period the following minimum insurance in accordance with the Insurance Act, RSA 2000, c. I-3:

- (i) General Liability insurance in an amount not less than \$10,000,000 inclusive per occurrence insuring against bodily injury, personal injury and property damage including loss of use thereof.
- (ii) Automobile Liability on all vehicles owned or licensed in the name of the Municipality in an amount not less than five million dollars (\$5,000,000.00).

(b) The Municipality shall ensure that its Contractors and Subcontractors involved with any matter related to the construction and installation of the Project shall obtain and maintain the following insurance in compliance with the Alberta Insurance Act:

General Liability Insurance in an amount of not less than \$10,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage, including loss of use thereof. If this requirement is satisfied with a Wrap-up Liability insurance policy, the Province must be added as a Named Insured and other insureds must include all subcontractors, consultants and subconsultants involved in the Project. Such insurance shall include, but not be limited to:

- (i) Products and Completed Operations Liability;
- (ii) Owner's and Contractor's Protective Liability
- (ii) Blanket Written Contractual Liability;

- (iii) Contingent Employer's Liability;
- (iv) Forest Fire Fighting Expenses(minimum sublimit \$250,000);
- (v) Non-Owned Automobile Liability(minimum sublimit \$5,000,000);
- (vi) Cross Liability and Severability with respect to additional insureds;
- (vii) Employees as additional insureds;
- (viii) Broad Form Property Damage;
- (ix) Operation of Attached Machinery;
- (x) Sudden and Accidental Pollution (as per IBC 2313 or similar. Minimum sub-limit \$2,000,000); and

and where such further risk exists:

- (i) Blasting, Demolition, Pile Driving, Caisson Work or Tunneling, as applicable;
- (ii) Elevator and Hoist Liability; and
- (iii) Towing/On Hook Coverage.

Automobile Liability Insurance on all vehicles owned or licensed in the name of the Contractor or Subcontractor in an amount not less than \$5,000,000.

- (c) The Municipality shall ensure that its Engineering Consultants and any sub-consultants involved with any matter related to the design of the Project shall obtain and maintain the following insurance in compliance with the Alberta Insurance Act:

General Liability Insurance in an amount of not less than \$2,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage, including loss of use thereof;

Automobile Liability Insurance on all vehicles owned or licensed in the name of the Engineering Consultant or sub-consultant in an amount not less than \$2,000,000; and

- (d) Professional Liability Insurance in an amount of not less than \$1,000,000 per claim insuring the Engineering Consultant's or sub-consultant's liability resulting from errors or omissions in the performance of its professional services under this Agreement. Such insurance shall not exclude bodily injury or property damage claims arising from the performance of the professional services under this

Agreement. Such insurance shall remain in place for a period of 12 months following the completion of the Project.

- (e) All the foregoing insurance shall be primary and not require the pro rata sharing of any loss by any insurer of the Province.
- (f) The Municipality must provide to the Province evidence of insurance required of the Municipality and its Contractors and Engineering Consultants, satisfactory to the Province, at any time requested by the Province. The Province may require such evidence of insurance to be in the form of detailed insurance certificates or certified copies of required insurance policies.
- (g) Where a guarantee period is required by the Province under this Agreement, the Municipality shall ensure that Products and Completed Operations coverage, as applicable, shall be in force for the duration of the guarantee period.

### **Assignment**

- 11. The Municipality shall not assign or otherwise dispose of any of its rights, obligations or interests in this Agreement without the prior written consent of the Province.

### **No Agency**

- 12. The relationship of the Municipality to the Province under this Agreement is that of an independent funder, and nothing in this Agreement is to be construed as creating an agency, partnership, joint venture or employment relationship between the Municipality and the Province.

### **Funding Agreement**

- 13. The Province and the Municipality agree that this Agreement is only a funding agreement between the Parties, and at no time shall the Municipality acquire any ownership interest in the Project or the Highway and nor shall the Municipality acquire any right to restrict or prohibit access to the Highway by the general public except as expressly authorized by the Province and necessary for the Project.

## Notice

14. Any notice to be made under this Agreement is to be made in writing, and is effective when delivered to the address or transmitted by fax to the fax number, as follows:

The Province: Alberta Transportation  
Address: Delivery Services Division  
3<sup>rd</sup> Flr, 909 – 3<sup>rd</sup> Ave N  
Lethbridge, AB  
T1H 0H5  
Attention: Darren Davidson  
Regional Director, Southern Region  
Email: Darren.Davidson@gov.ab.ca

The Municipality: Wheatland County  
Address: 242006 Range Road 243  
Highway 1, RR1  
Strathmore, AB  
T1P 1J6  
Attention: Brian Henderson, CAO  
Email: Brian.Henderson@wheatlandcounty.ca

The Parties respectively designate for the time being, the individuals identified in this clause as having the authority to give notice, and notice given by these individuals is binding on the party giving the notice.

Either Party may change its information in clause 14 by giving notice to the other in the manner described in this clause.

Any notice personally served or sent by fax shall be deemed received when actually delivered or received, if delivery or fax transmission is on a Business Day, or if not on a Business Day, on the following Business Day.

15. The Province may at any time immediately terminate this Agreement, without cause, upon thirty (30) days' written notice to the Municipality.
16. The Province designates Jerry Lau, Infrastructure Manager of the Department of Transportation as the Province's representative for communications and ongoing contact



between the Province and the Municipality in matters relating to this Agreement, other than giving notice pursuant to clause 14. The Municipality Michael Ziehr, General Manager of Transportation and Agriculture, as the Municipality's representative for communications and ongoing contact between the Province and the Municipality in matters relating to this Agreement, other than giving notice pursuant to clause 14. Either party may change its designated representative above by sending written notice to the other party of such change.

### **Authority**

17. Each Party has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

### **General Provisions**

18. Each Party will perform the acts, execute and deliver the writings, do all such things and give the assurances necessary to give full effect to this Agreement.
19. Time is of the essence of this Agreement.
20. This Agreement contains the entire agreement of the Parties concerning the subject matter of this Agreement and except as expressed in this Agreement, there are no other understandings or agreements, verbal or otherwise, that exists between the Parties.
21. Any waiver by either Party of the performance by the other of an obligation under this Agreement must be in writing, and such waiver does not constitute a continuing waiver of the performance of that obligation unless a contrary intention is expressed in writing.
22. The Parties may amend this Agreement only by mutual written agreement signed by the parties.
23. This Agreement shall be governed by and interpreted in accordance with the laws in force in Alberta, and the Parties irrevocably attorn to the exclusive jurisdiction of courts in Alberta.

24. The Municipality shall not suffer or permit any builder's lien(s) or other lien for work, labour, equipment, services or materials, including, but not limited, to a claim under the Public Works Act to remain filed or claimed against the Project or the title to the lands associated with the Project. Any such lien filed or claimed shall be removed and/or resolved by the Municipality, to the Province's satisfaction, within 30 days following receipt of written notice from the Province to the Municipality of the existence of any such lien.
25. The Parties agree to give this Agreement a fair and liberal interpretation and to negotiate with fairness and candor, any modification or alteration that may be rendered necessary by changing conditions.
26. The headings in this document have been included for convenience only and they do not define, limit or enlarge the scope or meaning of this document or any part of it.
27. This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original but all of which taken together shall constitute one and the same instrument. This Agreement may be executed and delivered by fax transmission sent to any Party hereto or their counsel.

The Parties have therefore signed this Agreement, by their respective duly authorized officers.

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**, as represented by the Minister of Transportation

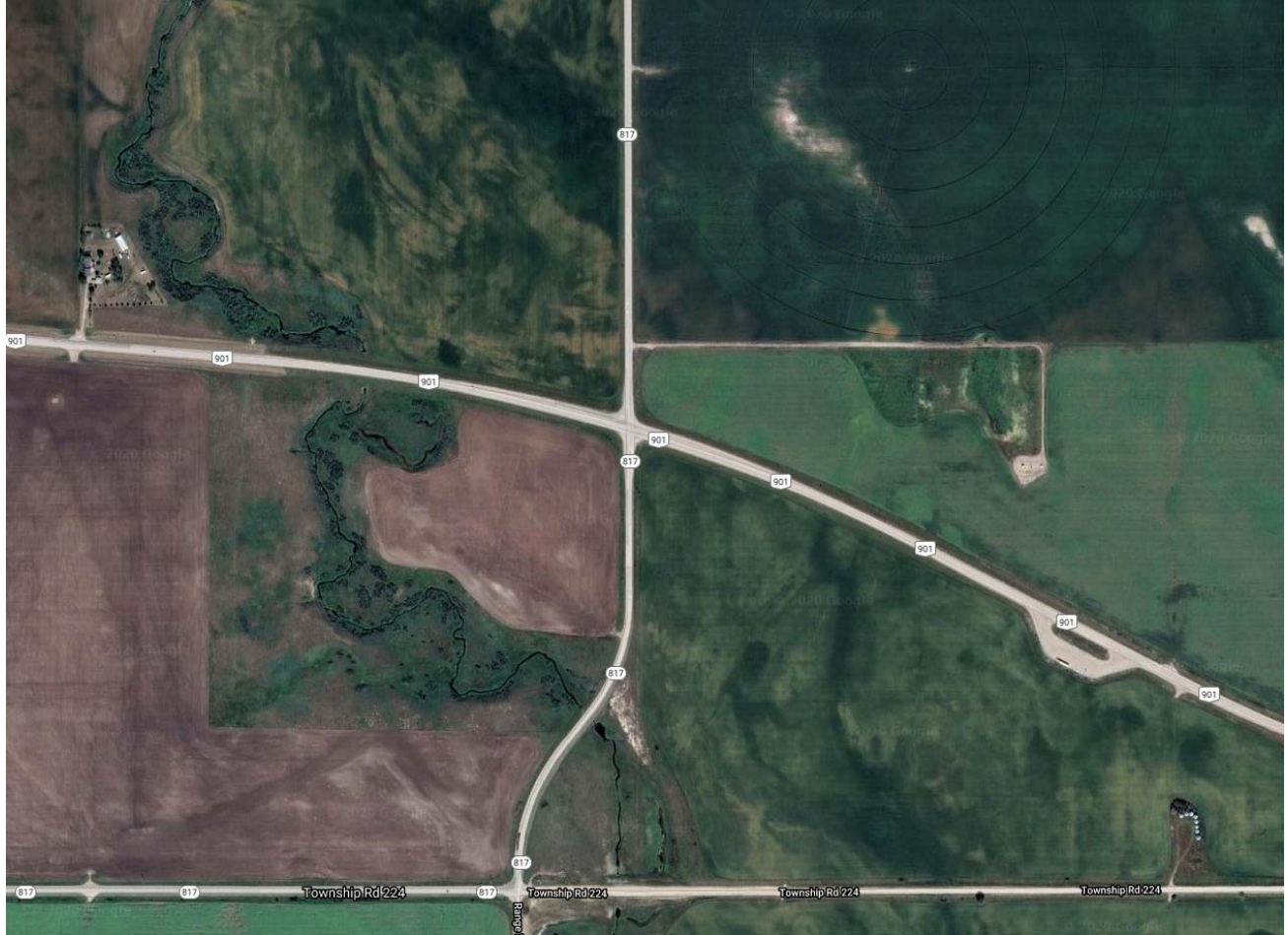
PER: \_\_\_\_\_  
NAME:  
TITLE:

**WHEATLAND COUNTY**

PER: \_\_\_\_\_  
NAME: AMBER LINK  
TITLE: REEVE

PER \_\_\_\_\_  
NAME: BRIAN HENDERSON  
TITLE: CHIEF ADMINISTRATIVE OFFICER

**SCHEDULE "A"**  
**LOCATION PLAN**



Intersection of Highways 817 & 901 (INT# 2041)

**SCHEDULE "B" – Schedule of Costs**

COSTS:

HIGHWAYS 817 & 901 PARTIAL HIGHWAY LIGHTING \$ 60,000.00

TOTAL \$ 60,000.00

COST PROPORTIONS

WHEATLAND COUNTY (50%) \$ 30,000.00

PROVINCE (50%) \$ 30,000.00

TOTAL \$ 60,000.00