

CCO Form: FS08
Approved: 03/04 (BDG)
Revised: 03/17 (MWH)
Modified: 08/21 (MWH)

Route 291, Jackson County
Project No. J4P3196
City of Lee's Summit
Agreement No. 2021-03-61790

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
COST SHARE AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Lee's Summit (hereinafter, "Entity").

WITNESSETH:

WHEREAS, the Entity applied to the Commission's Cost Share Committee for participation in the Commission's *Cost Share Program*; and

WHEREAS, on December 10, 2020, the Cost Share Committee approved the Entity's application to the *Cost Share Program* subject to the terms and conditions of this Agreement, and

WHEREAS, on April 14, 2021, the Cost Share Committee approved the Entity's modified estimate to the Cost Share Program subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The purpose of this Agreement is to co-ordinate the participation by the Entity in the cost of the Commission's Project J4P3196 . The project's improvements (hereinafter, "Interchange Project") include bridge replacement, grading, paving, drainage, signing, sidewalks, and intersection improvements on MO 291 over US 50. The parties' responsibilities with respect to the Entity taking ownership and maintenance of portions of Blue Parkway are outlined in a separate Missouri Highways and Transportation Commission Relinquishment Agreement (hereafter, referred to as "Relinquishment Agreement") (Agreement No. 2021-04-62568) between the parties. If the Entity fails to enter into the above mentioned Relinquishment Agreement accepting ownership and maintenance of portions of Blue Parkway then the Commission is under no obligation to continue with the Interchange Project.

(2) LOCATION: The transportation improvement that is the subject of this Agreement is contemplated at the following location:

MO 291, beginning at Log Mile 31.502 and ending at approx. Log Mile 31.692. The length of the project of the improvement along centerline MO 291 being 0.20 miles.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Entity and the Commission.

(4) COMMISSION REPRESENTATIVE: The Commission's Kansas City District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(5) ASSIGNMENT: The Entity shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(6) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Entity shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(7) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the Entity with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Entity.

(8) INTERCHANGE PROJECT IMPROVEMENT CONTINGENT UPON FACILITY PROJECT: Concurrent with the Interchange Project by the parties, the Entity agrees to construct the Missouri State Highway Patrol Facility (hereinafter, "Facility Project").

(A) The Entity shall be one hundred percent (100%) responsible for all costs for the Facility Project currently estimate at eight million, one hundred thirteen thousand dollars (\$8,113,000), at no cost to the Commission whatsoever, except for the right-of-way to be donated by the Commission and the Office of Administration/Missouri State Highway Patrol. Upon Commission Approval the Commission will donate parcels described herein and illustrated in "Exhibit C", which is attached hereto and made part hereof.

(B) Upon Commission Approval the Commission will donate right-of-way parcels valued at two million twelve thousand eight hundred ninety-seven dollars (\$2,012,897) for the Facility Project and Interchange Project. The right-of-way parcels are described in "Exhibit C". The Office of Administration and/or Missouri State Highway Patrol is anticipated to donate right-of-way valued at one million four thousand three hundred and eight-seven dollars (\$1,004,387) for the Interchange Project. This

Agreement is contingent on legislative approval for the State of Missouri to convey land owned by the State of Missouri to the Entity. The Entity is solely responsible for this legislative action.

(C) The parties agree that the construction of the Interchange Project pursuant to this Agreement is contingent upon the Entity completing the construction of the Facility Project. The Entity shall construct the Facility Project no later than February 1, 2024. If the Entity fails to complete the Facility Project prior to February 1, 2024, the Commission is under no obligation to complete work on the Interchange Project. The Commission reserves the right in its sole discretion to delay, suspend or terminate work on the Interchange Project. The Entity agrees to pay all costs incurred by the Commission for the Interchange Project, excluding Commission staff time, including but not limited to Commission costs for preliminary engineering, right-of-way cost, utility costs and construction delays.

(9) PROJECT RESPONSIBILITIES FOR THE INTERCHANGE PROJECT: With regard to project responsibilities under this Agreement, the parties agree to contribute as follows:

(A) The Entity shall be responsible for preliminary engineering. This includes preparation of the detailed construction plans and project specifications, the solicitation and contract management for the design consultant, the environmental review, and right-of-way plans and utility coordination, if needed. The plans shall be prepared in accordance with and conform to Commission requirements and follow the Local Public Agency (**LPA**) process. Said plans shall not be changed in concept or scope without prior written approval of the Commission.

(B) The Entity shall acquire right-of-way in accordance with Commission requirements and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. If utility relocations are needed, the Entity shall be responsible for coordinating utility relocations.

(C) The Commission will assist with project management for preliminary engineering. The design consultant and Entity shall work directly with the Commission's Kansas City (KC) District Project Manager to ensure the project meets purposes and need, schedule, intended scope and budget. The KC District Project Manager will provide an example of scope of services and review and provide recommendations for approval of the final scope of services. The Commission will provide representatives to assist with scoring for the consultant.

(D) The Commission will provide preliminary engineering review and right-of-way review.

(E) The Commission will be responsible for letting the work for the Interchange Project which includes advertising the project for bids and awarding the

construction contract. The Commission will solicit bids for the project in accordance with plans developed by the Entity and approved by the Commission.

(F) The Commission will be responsible for construction engineering, which includes administration of the construction contract, change orders and inspection of the project work. The project shall be constructed in accordance with and conform to Commission requirements.

(G) The Entity shall provide the survey and legal descriptions required for the conveyances of Blue Parkway from the Commission to the Entity . The survey and legal descriptions shall be submitted with the design plans.

(10) FINANCIAL RESPONSIBILITIES FOR THE INTERCHANGE PROJECT:
With regard to work under this Agreement, the Entity agrees as follows:

(A) The Interchange Project cost is currently estimate at twenty one million nine hundred nine thousand fifty seven dollars (\$21,909,057) and will include preliminary engineering, preliminary engineering review, right-of-way acquisition, right-of-way review, right-of-way incidentals, utilities, construction and construction engineering . The details of the estimated cost breakdown are listed below and in “Exhibit B”, which is attached hereto and made part hereof.

(B) The Entity shall be responsible for forty five percent (45%) of the Interchange Project cost. The current estimate of the Entity’s responsibilities is nine million eight hundred ninety-eight thousand twenty-eight dollars (\$9,898,028). The Entity shall receive a credit for preliminary engineering, right-of-way acquisition, right-of-way incidentals and utility costs paid by the Entity currently estimated at four million five hundred ninety-five thousand six hundred sixty-five dollars (\$4,595,665). Upon the Commission’s receipt of documentation of actual cost incurred and paid by the Entity towards the Entity’s share of the preliminary engineering, the amount to be deposited by the Entity hereunder shall be reduced by the amount of the credit described in the foregoing sentence, specifically the amount of four million five hundred ninety-five thousand six hundred sixty-five dollars (\$4,595,665). As a result of the credit for the preliminary engineering, right-of-way acquisition, right-of-way incidentals, and utility costs, the Entity shall remit a check in the amount of five million three hundred two thousand three hundred sixty-three dollars (\$5,302,363) to cover estimated construction and inspection costs no later than five (5) days prior to the Commission’s advertisement of the project for bids. The check should be made payable to the *Missouri Highway and Transportation Commission – Local Fund*. If the Entity fails to make any of the required deposits, the Commission is under no obligation to continue with the Interchange Project.

(C) The Commission will pay for fifty-five percent (55%) of the Interchange Project, not to exceed twelve million eleven thousand and twenty nine dollars (\$12,011,029). Of this amount, the Commission will provide ten million, seven hundred five thousand, four hundred and seven dollars (\$10,705,407. from the Commission’s Cost Share program, of which, three million eight hundred forty-four thousand, seven hundred

and eighty-five dollars (\$3,844,785) is available in State Fiscal Year 2022, four million eight hundred sixty thousand six hundred and twenty-two dollars (\$4,860,622) is available in State Fiscal Year 2023, and two million dollars (\$2,000,000) is available in State Fiscal Year 2024. The remaining one million three hundred five thousand six hundred twenty-two dollars (\$1,305,622) will be funded from the operating budget and the Statewide Transportation Improvement Plan (STIP) budget.

(D) The Entity shall be responsible for the balance of the Interchange Project in excess of twenty one million nine hundred nine thousand fifty seven dollars (\$21,909,057). The Entity shall be responsible for any overruns.

(E) If, at the time of the letting, the lowest responsive bid is higher than the estimated construction cost amount, the Entity, upon written notification from the Commission shall remit a check in the amount of its share of the difference between the estimated amount and the lowest responsive bid no later than one (1) day prior to the date of the Commission meeting wherein the subject bid will be considered for award or a later date set by the Commission in its sole discretion. In the event the Commission, in its sole discretion, extends the day the Entity payment is due, it shall notify the entity of the new due date in writing, which shall be binding immediately upon the Entity's receipt of the written notice. The check must be made payable to the *Director of Revenue – Credit Local Fund*. The Commission, in its sole discretion, reserves the right to take action at the said Commission meeting and either reject all bids if the Entity fails to make the payment by the due date, or award the contract to the lowest responsive bidder contingent upon receipt of the additional funds from the Entity by the extended due date. If the Commission makes a contingent award of the contract and the Entity fails to make the required deposit(s) by the extended due date, the contingency of the contract award by the Commission shall be deemed unsatisfied, the award of the contract shall be deemed null and void and the Commission shall be under no obligation to continue with the project.

(F) The Entity agrees to review the bids for purposes of awarding the Commission's construction contract. If the lowest responsive bid is greater than five percent (5%) above the engineers estimate, then the Commission may not award said construction contract unless the Entity concurs in such award. The Entity shall provide concurrence within three (3) business days of the bid opening by the Commission. Failure of the Entity to respond within three (3) business days of the bid opening by the Commission shall be construed as concurrence by the Entity.

(11) COMMINGLING OF FUNDS: The Entity agrees that all funds deposited by the Entity, pursuant to this Agreement with the Commission, may be commingled by the Commission with other similar monies deposited from other sources. Any deposit may be invested at the discretion of the Commission in such investments allowed by its Investment Policy. All interest monies shall be payable to the *Local Fund* and credited to the project. If the amount deposited plus any applicable credited interest with the Commission shall be less than the actual obligation of the Entity for this project, the Entity, upon written notification by the Commission, shall tender the necessary monies to the Commission to completely satisfy its obligation. Upon completion of the Interchange

project, any excess funds or interest credited to the Entity shall be refunded to the Entity based on its pro rata share of the investment.

(12) COMMISSION RIGHT OF WAY: All improvements made within the state-owned right-of-way shall become the Commission's property, and all future alterations, modifications, or maintenance thereof, will be the responsibility of the Commission.

(13) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(14) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Entity.

(15) NO INTEREST: By contributing to the cost of this project or improvement, the Entity gains no interest in the constructed roadway or improvements whatsoever. The Commission shall not be obligated to keep the constructed improvements or roadway in place if the Commission, in its sole discretion, determines removal or modification of the roadway or improvements, is in the best interests of the state highway system. In the event the Commission decides to remove the landscaping, roadway, or improvements, the Entity shall not be entitled to a refund of the funds contributed by the Entity pursuant to this Agreement.

(16) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(17) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(18) ADDITIONAL FUNDING: In the event the Commission obtains additional federal, state, local, private or other funds to construct the improvement being constructed pursuant to this Agreement that are not obligated at the time of execution of this Agreement, the Commission, in its sole discretion, may consider any request by the Entity for an off-set for the deposited funds, a reduction in obligation, or a return of, a refund of, or a release of any funds deposited by the Entity with the Commission pursuant to this Agreement. In the event the Commission agrees to grant the Entity's request for a refund, the Commission, in its sole discretion, shall determine the amount and the timing of the refund. Any and all changes in the parties' financial responsibilities resulting from the Commission's determination of the Entity's request for a refund pursuant to this provision must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Entity and the Commission.

(19) NO ADVERSE INFERENCE: This Agreement shall not be construed more

strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(20) ENTIRE AGREEMENT: This Agreement and the Relinquishment Agreement reference herein represent the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(21) VOLUNTARY NATURE OF AGREEMENT: Each party to this Agreement warrants and certifies that it enters into this transaction and executes this Agreement freely and voluntarily and without being in a state of duress or under threats or coercion.

(22) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or immediately after delivery in person, or by facsimile or electronic mail addressed as follows:

Commission to: Missouri Department of Transportation
Attn: District Engineer
600 NE Colbern Road
Lee's Summit, MO 64086

Entity to: City of Lee's Summit
Attn: Public Works Director
220 SE Green Street
Lee's Summit, MO 64063

or to such other place as the parties may designate in accordance with this Agreement.

(23) AUDIT OF RECORDS: The Entity must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(24) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Entity shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Entity's wrongful or negligent performance of its obligations under this Agreement.

(B) The Entity will require any contractor procured by the Entity to work under this Agreement:

(1) To obtain a no cost permit from the Commission's Kansas City District Engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's KC District Engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

*Remainder of Page Intentionally Left Blank; Signatures and Execution Appear on
Following Page*

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the Entity on _____ 2021.

Executed by the Commission on _____ 2021.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF LEE'S SUMMIT

Title _____

By _____
Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

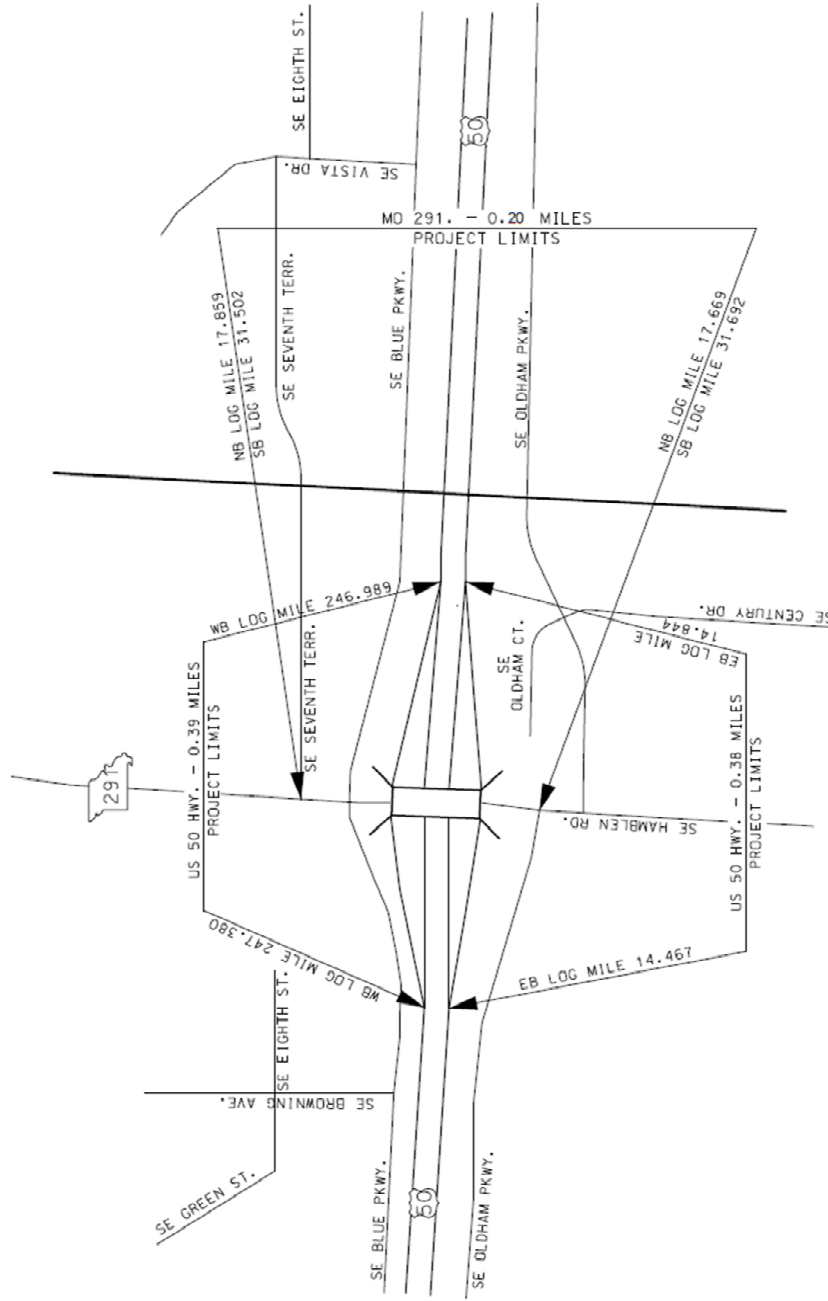
Approved as to Form:

Commission Counsel

Title: _____

Ordinance No _____

EXHIBIT A



NOT TO SCALE

EXHIBIT A
 MO 291 AND US 50 HWY.
 LEE'S SUMMIT, JACKSON COUNTY, MISSOURI

EXHIBIT B

Description: MO 291 at US 50 - Bridge, roadway and intersection improvements from SE Oldham Rd to SE 7th Terrace

Local Entity: City of Lee's Summit

Financial Responsibilities (Interchange Project):

	Current Estimate
Preliminary Engineering (Consultant)	\$2,401,165.00
ROW Acquisition	\$1,870,000.00
ROW Incidentals	\$17,000.00
Utilities	\$307,500.00
Sub Total (credit)	\$4,595,665.00

Preliminary Engineering Review (MoDOT)	\$15,000.00
Right-of-Way Review (MoDOT)	\$10,000.00
Construction	\$16,007,770.00
Construction Engineering (MoDOT)	\$1,280,622.00
Total	\$21,909,057.00

Interchange Project Responsibilities:

Design	Entity
Right-of-Way	Entity
Letting	Commission
Inspection	Commission

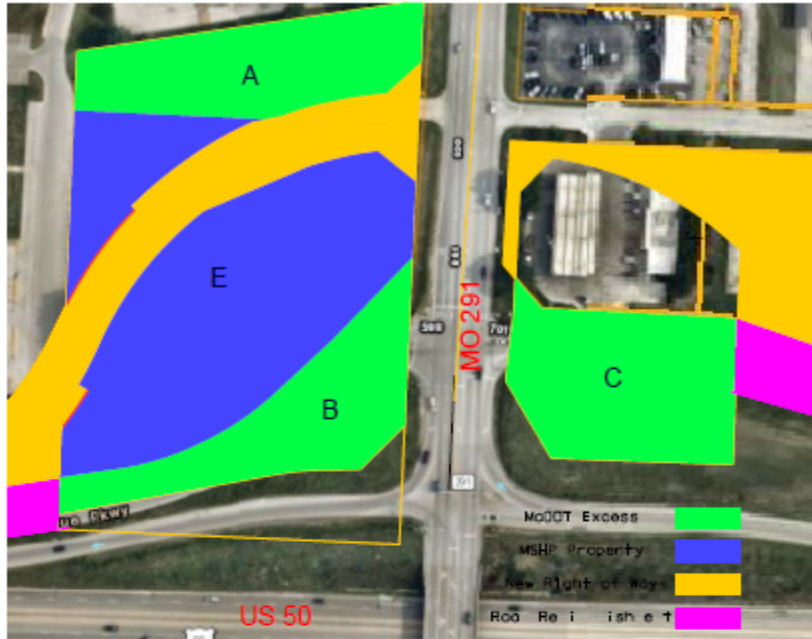
Project Breakdowns:

	Interchange Project	Facility Project	Facility Project + Interchange Project
Commission Cost Share Funds	\$10,705,407.00	\$0.00	\$10,705,407.00
Commission KC District STIP funds	\$1,305,622.00	\$0.00	\$1,305,622.00
Commission Value of Donated ROW*	\$0.00	\$2,012,897.00	\$2,012,897.00
Entity	\$9,898,028.00	\$8,113,000.00	\$18,011,028.00
OA/MSHP Value of Land Donated	\$0.00	\$1,004,387.00	\$1,004,387.00
Total	\$21,909,057.00	\$11,130,284.00	\$33,039,341.00

How are overruns and underruns handled?

The Entity shall be responsible for the balance of the Interchange Project in excess of twenty one million nine hundred nine thousand fifty seven dollars (\$21,909,057). Upon completion of the Interchange project, any excess funds or interest credited to the Entity shall be refunded to the Entity based on its pro rata share of the investment. The Entity is solely responsible for the Facility Project.

EXHIBIT C



MoDOT donated property
State of MO/MSHP land

Parcels
 A - North of MSHP site
 \$327,139
 B- OR Area - West
 \$282,958
 C - OR Area -East
 \$332,800
 D - New MSHP site
 \$1,070,000
 Total Value \$2,012,897

E - Existing MSHP site
 \$1,004,384

