Exhibit E
SUPPLEMENTAL CONTRACT TERMS
Updated Addendum 3 2/9/23

PART 1 GENERAL

1.01 SUMMARY

A. The Contract Form is CITY-CONTRACTOR AGREEMENT #23-008, Terms & Conditions, General Conditions, and as amended by these Supplemental Contract Terms.

1.02 Construction Manager, Navigate Building Solutions

A. The Construction Manager for the Project shall be Navigate Building Solutions ("Navigate"). All communications between Contractor and Owner shall be through Navigate on behalf of Owner. Navigate has the authority to take all actions on behalf of the Owner permitted by the Contract Documents, with the sole exception of agreeing to any Modifications to the Contract. Only the Owner's representatives Devon Dezort, Susan Spiegel, or the Mayor have the authority on behalf of the Owner to agree to any Change Order and/or to otherwise agree to authorize any Modifications, with it being understood and agreed that any Modifications to the Contract must be executed by Devon Dezort, Susan Spiegel, or the Mayor on behalf of the Owner in order to be effective.

1.04. MODIFICATIONS TO CONTRACT FORM

A. CITY-CONTRACTOR AGREEMENT #23-008 is hereby modified as follows:

1. Add the following to Section RECITALS:

   C. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of all work related to new construction and bid alternates (identified as being included in the Base Bid), and associated Site Work within the number of days identified in this Section.

   The following Bid Alternates are accepted as part of the Award Amount listed:
   Alternate No. TBD in the amount of $TBD
   Alternate No. TBD in the amount of $TBD

   The following alternates may be accepted by the Owner following execution of this Agreement. The Owner reserves the Right to accept the following alternates through the Change Order Process post execution of this Agreement for the amounts below. This Contractor must hold prices for these Alternates for a period of Sixty (60) days.
   Alternate No. TBD in the amount of $TBD
   Alternate No. TBD in the amount of $TBD

   Unit Prices shall be as submitted in Exhibit C – Supplemental Bid Information.

2. Add the following to Section RECITALS:
   D. The Date of Commencement for the Contractor's Work shall be the date fixed by the Owner's written Notice to Proceed.

3. Add the following to Section 3 Coordination of Contract Documents:

   In the event of discrepancies or conflicts among or between the Contract Documents or observable conditions exist, the Contractor shall request an interpretation in writing from the Owner and Architect before proceeding with the Work.

   If the Contractor fails to request such interpretation from the Architect and Owner, it is presumed that the more stringent, better quality or higher quality requirement is included in the Work. The Contractor shall be responsible for the cost and installation of such requirement at no additional cost to the Owner. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for correctness of such measurements. Any difference which may be found shall be submitted to the Architect for interpretation before proceeding with the Work as a condition precedent to any claim for an increase in the Contract Sum.

   If conflict among various provisions of the Contract Documents is found, and the quality or stringency of the conflicts are not in question, the terms shall be interpreted in the following order of priority:

   a. Modifications to the Contract
   b. The Contract
   c. Special Conditions
   d. General Conditions

   Specifications shall control over Drawings, and details in drawings shall control over large-scale drawings.

4. Add the following to Section 4 Payment:

   (a) Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

   The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Contractor shall submit a draft Application for Payment electronically to the Architect and the Construction Manager not later than the 20th day of the invoicing month. Upon receipt of a recommendation for approval form the Architect and Construction Manager, the Contractor shall submit the official Application for Payment to the Architect not later than the first day of a month.

   (b) Applications for Payments shall be submitted in similar formats to the AIA Documents G702 and G703 and acceptable to the Owner in compliance with other requirements set forth herein. In the event of a dispute with regard to any item included in an Application for Payment, the Owner shall make payment for items not in dispute and shall have the right to withhold from payment the amount of such disputed item while the parties attempt to resolve the dispute in accordance with the dispute resolution provisions provided for in the Contract Documents.

(c) Applications for Payments shall include:

i. Certified payrolls
ii. Invoices for all materials, rental equipment, and Contractor's statements (if requested by the Owner)
iii. Copies of Contractor's daily log (if not already submitted)
iv. Compliance with prevailing wage laws as per annual wage order issued with this contract
v. If invoicing for stored materials that have not been delivered to the project site, the following must be provided: proof of stored materials including certificate of insurance for facility where materials are stored, photographs of such materials, materials are labeled with signs indicating materials are "Property of City of Wentzville, Missouri" and copies of invoices for materials from the vendors/supplier.

(d) With each Application for Payment, the Contractor warrants that title to all Work covered by the Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payment certificates and payment have been made, to the best of Contractor's knowledge, information and belief, are free and clear of all liens, claims, security interests or encumbrances in favor of the Contractor, any Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment related to the Work.

Certified Payroll Procedures:

The Contractor & each Subcontractor are required to submit one (1) Certified Payroll for each week that work is in progress & must be numbered sequentially. If work is temporarily suspended, the last payroll must be appropriately marked to note that it would be the last payroll until work is resumed. Submitter shall make sure that each payroll is numbered and dated, includes the name of the Project on it as well as the name of the Subcontractor. Provided that all payrolls are numbered sequentially, Contractor will not need to send "No Work" payrolls when no hours are logged for a pay period. Submitter shall label each of the "Final Payrolls" from each Contractor/Subcontractor as such.

The Contractor must submit one (1) certified originals of each weekly payroll within seven (7) days of the payment date of the payroll. The certification may be attached to the payroll or may be on the payroll itself. The Contractor will be considered responsible for submittal of payrolls and certifications for all their Subcontractors on the project. The certification must be properly signed originals. Electronic submittal of certified payrolls is not permitted. Failure to submit these payrolls within the 7-day period will result in delay in submittal of pay applications. All certified payrolls must be certified by an officer of the Contractor. Contractor cannot certify several pay periods with only one payroll certification. This is unacceptable to the Department of Labor. Each certification must also be dated and signed to be valid. Owner would prefer that the certification be signed in a color other than black. Owner can accept Xeroxed payrolls; however, the certifications must each be signed with an original, live signature, not copies.

The employee's full name must be used. Addresses must be listed on certified payrolls. Contractor may not include Social Security numbers of employees on certified payrolls but must assign the employee an identification number and place that identification number on the certified payroll. The identification number can be the last four digits of the employee's Social Security number. Employers (prime Contractors and Subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for labor standards compliance. All deductions must be clearly identified. Only approved deductions should be used in wage rate calculations as per the Code of Federal Regulations. The US Department of Labor Form LS-57 may be used, as this form complies with all code requirements. If any part of the payroll or payroll certification

is illegible or not completely filled out, they will be returned to Contractor for correction and re-submission.
The first time each apprentice appears on a certified payroll, their apprentice certification letter must accompany that certified payroll. Approval of such certified payroll, and the pay application submission, will be delayed if such letter is not included.

Retainage shall be invoiced and paid upon Final Completion of the Contractor's Work, less such amounts as are attributable to 150% of the value of incomplete work and unsettled claims.

(e) Substantial Completion. Substantial Completion is defined to mean and take into account the situation when the Work, or a specific portion of it, is sufficiently complete so that the Owner can occupy or utilize the Work for its intended use. The Contractor shall notify the Owner and the Architect when the Contractor believes that the Work is substantially complete. Upon inspection of the Work and determination among the Owner and Architect that certain items need to be completed or corrected, Contractor shall be given notice to proceed with completion of such items. Contractor shall complete such items within seven (7) calendar days of receiving the notice. Upon Contractor's completion and correction of the remaining items, and upon satisfactory follow-up inspection of the Work by the Owner and Architect, a Certificate of Substantial Completion shall be issued by Architect. To the extent set out in the Certificate of Substantial Completion, the remaining responsibilities of the Owner and the Contractor shall be determined for the matters so included, as well as the time for completion.

(f) The Owner, upon acceptance of the Certificate of Substantial Completion, shall make payment of the amount of the retainage applicable to the Work completed and covered by said Certificate, subject to such adjustments as may be authorized. After Substantial Completion, any payments made to Contractor shall not be subject to any retainage being withheld.

(g) Final Completion and Payment. Upon completion of the Work, the Contractor shall provide to the Owner and Architect written notice that the Work is ready for final inspection and acceptance, along with Contractor's final Application for Payment. The Work shall then be inspected by the Owner and Architect, and when the Work is found to be acceptable and complete, the Architect shall issue a final Certificate for Payment stating that the Work has been completed in accordance with the Contract Documents.

(h) In order for the final payment and any remaining retainage to become due, Contractor shall submit to the Owner: (i) an affidavit that payrolls, bills for materials and equipment and any other indebtedness connected with the Work which could become the responsibility of the Owner, have been paid or otherwise satisfied; (ii) a certificate showing that any insurance required by the Contract Documents and related documentation to remain in force after final payment, is currently in effect and will be canceled only upon 30 days prior written notice to the Owner; (iii) an affidavit that all wages have been paid, and other requirements have been satisfied, of the Missouri Prevailing Wage Law; (iv) consent of surety to final payment, as applicable; (v) final and unconditional lien waivers signed by Contractor and all Subcontractors; (vi) copies of all as built documents, warranties and equipment manuals as required by the Contract Documents or by the Owner; and (vii) certificate of compliance with all other applicable laws and regulations, and requirements of the Owner. Upon satisfaction of the requirements and procedures and the providing of all affidavits, certificates, lien waivers and other documentation required by the Contract Documents has been completed, the Owner shall make final payment, which shall be the unpaid balance of the Contract Sum, to the Contractor. Acceptance of final payment by the Contractor and by all

Subcontractors shall constitute waiver by those parties of all claims except any previously made in writing.

(i) The Owner's making of final payment shall constitute a waiver of all claims by the Owner, except those arising from liens, claims, security interests or encumbrances arising out of the Contract Documents and remaining unsettled; failure of the Work to comply with the requirements of the Contract Documents; and the terms of guarantees and/or warranties as may be required by the Contract Documents.

5. Add the following to Section 7 Time of Completion:

Contractor shall complete the Work in accordance with the intermediate substantial completion dates for the following milestones which are identified in Exhibit D Scope of Work:

a. Submission of the critical and all remaining project submittals
b. Main Building 'Dry-In'

The Contractor has contemplated all adverse weather within the project schedule and the Contract Time. Except for "Unusually Severe Weather, defined as a weather condition more severe than one would reasonably anticipate at the Site based on historical conditions over the past five (5) years as established by the National Weather Service, Contractor accepts all risks associated with adverse weather. No time extensions will be granted related to claims of adverse weather, except for Unusually Severe Weather. No claims for extra costs will be granted related to adverse weather and/or taking action to deal with adverse weather and/or the effects of adverse weather, except for Unusually Severe Weather.

The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated work or achieve the required percentage of completion, as applicable, with any interim completion dates established in the most recently approved Construction Schedule.

The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

Recovery Clause: If at any time during the course of the work, the Owner reasonably determines that the Contractor has fallen behind the critical path of the schedule, the Owner may upon written notice to the Contractor, require the Contractor to recover schedule by any means appropriate (including but not limited to the provision of extra shifts and/or overtime and/or adjustments to the schedule). Within five days of Contractor's receipt of such written notice, the Contractor shall provide the Owner with a written recovery plan and shall commence recovery efforts. So long as the Contractor has fallen behind schedule for reasons attributable to the Contractor (and not to force majeure events), all costs associated with the recovery of schedule shall be borne by Contractor. If, however, the Contractor is not at fault for the delay in the work (due to force majeure events or other causes that would otherwise entitle the Contractor to an extension of the Contract Time) then the Contractor shall be paid for the costs of recovering schedule pursuant to the provisions of the Contract Documents applicable to changes in the work.

The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and Final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. Contractor must substantiate any costs associated with such Owner directive.

6. Add the following to Section 19 Prevailing Wage:
   The Contractor will forfeit a penalty to the Owner of $100 per day (or portion of a day) for each worker that is paid less than the prevailing wage for any work done under the Contract by the Contractor or by any Subcontractor. (Section 290.250, RSMo). For detailed information on rules and occupational titles, see 8 CSR 30-3.010 through 3.060.

7. Add the following to Section 14 Contractor's Liability Insurance:
   Work may not proceed until proof of all required insurance has been provided to the Owner. All insurance policies shall include an ISO Additional Insured Endorsement (CG 20 10 and CG 20 37 2004 editions or equivalent) listing the Owner and the Owner's Construction Manager as additional insureds on a primary basis with Owner and/or Owner's Construction Manager's insurance to be in excess and not contributory. Contractor's general liability and automobile insurance policies shall contain a waiver of subrogation in favor of Owner and its officers, directors and employees, and an ISO Notice of Cancellation/Modification Endorsement providing thirty (30) days written notice to be given by the insurance company to the Owner prior to modification or cancellation of such insurance. Such notices shall be sent via email to the Owner's Construction Manager and the Owner directly.

   By execution and performance of this Contract, the Owner does not intend to, nor shall it be deemed to have waived or relinquished any immunity or defense on behalf of the Owner, and the Owner's board of aldermen, officers, directors, servants, employees, agents, successors or assigns.

8. Add the following to Terms and Conditions section **Indemnification; No Personal Liability; Immunity Retention**:
   After the word "agents" add ", Construction Manager"

9. Add the following to Section 16 Liquidated Damages:
   If the Contractor shall neglect, refuse, or fail to submit the critical project submittals and/or all remaining project submittals within the calendar days after Notice to Proceed (as defined in Exhibit D, Item 4 and including any proper extension granted by the Owner), Contractor shall pay the Owner the stipulated sum of Five Hundred Dollars ($500) for each day beyond the submittal milestone.

   If the Contractor shall neglect , refuse, or fail to complete Final Completion /Completion of Punchlist within (30) calendar days after Substantial Completion, or Final Acceptance within (90) calendar days after Substantial Completion, Contractor shall pay the Owner the stipulated sum of Five Hundred Dollars ($500) for each day beyond the allocated calendar days to achieve these dates.

10. Replace Section 26 Force Majeure as follows:
    Neither the Owner nor the Contractor shall be responsible for delays or failures to timely perform if such delay arises out of causes beyond either party's control. If either party shall be delayed from punctually performing any obligation or satisfying any condition under this Agreement as a result of a Force Majeure Event, then the time to perform such obligation or satisfy such condition shall be extended by the period of delay caused by such Force Majeure Event. "Force Majeure Event" means unforeseeable causes beyond Contractor's or Owner's control and without their fault or negligence, including, but not limited to, governmental action or inaction, war, acts of God or of the public enemy, riots, fires, floods, earthquakes, pandemics, epidemics, quarantines, strikes, lockouts, freight embargoes, or Unusually Severe Weather.

B. MODIFICATIONS TO the "TERMS AND CONDITIONS" issued as part of the IFB#23-008 Sample Agreement:

1. The drawings, specifications, and other instruments of service are owned by the Owner. The Contractor, Subcontractors, Sub- subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

2. E-mail may be used for routine correspondence but is not sufficient to constitute official notice.

3. Review of Contract Documents and Field Conditions by Contractor

   Execution of the Contract by the Contractor is a representation that the Contractor has visited the Site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during bidding or proposal period.

   Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work and shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

4. In lieu of correcting defective Work, the Owner may in its discretion decide to accept such defective Work and backcharge the Contractor a reasonable amount equivalent to what it would have cost to replace the defective Work.

5. Architect's and Construction Manager's Compensation for Services to Remedy Defective Work - When the Architect's and Construction Manager's additional services are required because of defective work, neglect, failure, deficiencies, or default by the Contractor, the Contractor shall be responsible to the Owner for the cost of such additional services.

6. If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section B.3 above, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

7. Contractor waives all claims for consequential damages against the Owner and Construction Manager arising out of this Agreement and/or the performance of the Owner's obligations thereunder.

8. Change Proposals: The Contractor must submit change proposals covering a contemplated Change Order within ten (10) days after the request of the Owner, Architect or Construction Manager or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work that is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in the Contract Sum or the Contract Time. Any proposed adjustment must include detailed documentation, including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, and additional bond cost. Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the Change Proposal without accepting the Change Proposal in its entirety. See Exhibit F, entitled Change Order Calculations which shall govern and apply to Change Orders. A Change Order is not effective until the Owner and Architect issue and sign the Change Order.

   If the Owner determines that a change proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

9. The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

10. Claims:

    A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

    Notice of circumstances that could give rise to a Claim must be given to the other party as soon as possible, to enable that party to take action as appropriate to lessen the impact of the potential Claim. The party recognizing a potential claim shall also explore all options and generate suggestions for how to avoid or overcome the impact of the circumstances. If damage cannot be avoided, Claims by either the Owner or Contractor must be initiated by written notice by mail or electronically to the other party. Claims by either party must be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

    Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9 above, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

11. Delays:

The sole remedy for delays other than Owner caused delays will be non-compensable time extensions for completion of the Work.

The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than seven (7) days after the occurrence of the event giving risk to such delay. The notice must be given to the Owner and Architect within the specified time. In the case of a Continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information specified below. The Contractor's failure to provide the written notice containing the information specified below within ten (10) days prescribed above will be conclusively deemed a waiver or any claim for delay arising from such occurrence.

The Contractor's notice must identify those portions of the Construction Schedule affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:

a. a written detailed statement of the reasons and causes for the delay;
b. inclusive dates of the delay;
c. specific trades and portions of the Work affected by the delay;
d. status of Work affected before commencement of the delay;
e. effect of the delay on available Float;
f. a critical path method (CPM) analysis demonstrating that the delay has affected an activity then on the critical path at the time of the occurrence of the delay as shown on the most recently approved Construction Schedule; and
g. if the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was due to a Force Majeure Event, as defined in the Agreement; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law) or anyone for whose acts the Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

12. Dispute Resolution:

The Owner and the Contractor agree that for Claims, disputes and other controversies arising out of, or related to this Agreement, they will attempt to informally resolve such matters in good faith, and include the Architect, as appropriate, in the informal resolution process. In the event a satisfactory resolution cannot be achieved despite the good faith efforts of the parties within a reasonable time, the parties may, but shall not be required, to engage in a formal mediation process, with the mediating agency and the mediating procedures to be mutually agreed upon.

If the described informal resolution process is not successful, and the Owner and the Contractor do not agree to proceed with formal mediation, then either or both of them may pursue litigation as the binding resolution process, consistent with the Governing/Choice of Law and Jurisdiction provision set forth above.