



4235 FM 78 Building 3
Seguin, Texas 78123
P (830) 476-2251
Terracon.com

January 31, 2025

Navarro Independent School District
Attn: Ms. Mandy Epley

6450 N State Hwy 123
Seguin, Texas 78155

Email: mandy.epley@nisd.us

**Re: Construction Materials Observation and Testing Services
Navarro ISD Drives, Parking, and Playgrounds
TX-123 and Link Road
Seguin, TX
Terracon Consultants Inc. Proposal No. P90251040**

Dear Ms. Epley,

Thank you for selecting Terracon Consultants, Inc. (Terracon) to provide construction materials observation and testing services for the proposed Navarro ISD Drives, Parking and Playgrounds project.

We understand that we have been chosen to provide these services for this publicly funded project. Therefore, by providing cost information we are not in violation of the Texas Professional Services Procurement Act.

We are presenting this budget estimate to confirm our understanding of the services to be performed for this project, to obtain written authorization to provide these services, and to present the estimated fee to provide these services. The following sections outline our understanding of the project and provide a description of the tasks to be performed.

A) PROJECT INFORMATION

Topic	Overview Statement
Proposed Structures	Addition of two new canopies, and relocation of two existing playground structures.
Foundation Types	Shallow isolated footing for canopies.
Sitework	Full depth reconstruction of existing front parking lots.

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Terracon was provided with the following construction documents for preparation of this proposal:

- Civil Drawings by Corgan dated January 13, 2025
- Structural Drawings by L.A. Fuess Partners, Inc and dated January 13, 2025

Terracon provided geotechnical engineering services for the project (Terracon Project No. 90245299, dated 11/20/2024). As such, we believe our experience, work on the project as the Geotechnical Engineer, and commitment to responsive quality service will continue to make Terracon a valuable asset to the project.

Note: Terracon was not provided a complete construction schedule for this project. A completed construction schedule can be reviewed upon request for a better representation of cost & materials testing.

B) WHY TERRACON?

Construction Materials Testing & Special Inspection Services

Our team of inspectors, technicians, and engineers is experienced with providing materials testing, special inspections, and/or observations of concrete, soils, aggregate, masonry, structural steel, foundations, fireproofing, and asphalt pavement in the local area and are familiar with the recognized building jurisdiction requirements.

Laboratory Capabilities

Our San Antonio laboratories are accredited by TxDOT, AASHTO Re:source which is recognized by ASTM E329 Standard Specification for Agencies Engaged in Construction Inspection, Testing, or Special Inspection. The scope of accreditation includes the field of Soils, Aggregates, and Portland Cement Concrete. As a requirement of accreditation, we regularly participate in the Proficiency Sample Programs of both AASHTO Re:source and the Cement and Concrete Reference Laboratory (CCRL). Our office includes a fully equipped laboratory and employs engineering technicians and special inspectors certified by many agencies including the American Concrete Institute (ACI), American Welding Society (AWS), and the International Code Council (ICC). We provide a rigorous internal training program where our staff are evaluated in specific field and laboratory test procedures by internal Terracon auditors and external agencies.

- Accredited by TxDOT
- Accredited by AASHTO Materials Reference Laboratory (AMRL)
- Inspected by Concrete and Cement Reference Laboratory (CCRL)
- Validated by United States Army Corps of

C) SCOPE OF SERVICES

Based on our review and understanding of the documents listed above, Terracon proposes the following scope of services:

Soils Observations and Testing:

- Sample materials to be used on-site. Prepare and test the samples for Atterberg Limits (ASTM D4318), Minus #200 Sieve (ASTM D1140), and moisture-density relationship (ASTM D698).
- Perform in-place moisture and density tests using the nuclear method (ASTM D6938) to determine the moisture content and percent compaction of the soil materials.

Cast-in-Place Concrete Observations and Testing:

- Sample and test the fresh concrete for each mix. Perform tests for slump, air content, ambient and concrete temperatures, and unit weight; and cast test specimens (ASTM C172, C31, C143, C231, C1064, C138). Terracon understands that the contractor will be responsible for maintaining the initial field curing temperature of the concrete test specimens.
- We have assumed the concrete will be sampled at a frequency of one set of five test cylinders every 100 cubic yards or fraction thereof per mix per day for all structural concrete. Terracon requests that a copy of the approved mix design(s) be provided to us prior to placement of the concrete.
- Perform compressive strength tests of concrete test cylinders cast in the field (ASTM C31, C39). Five 4" x 8" concrete cylinders will be prepared for structural concrete having nominal maximum size aggregate of 1 inch or less. One cylinder will be tested at 7 days, three cylinders will be tested at 28 days, and one cylinder will be tested at 56 days (if the 28-day cylinders do not meet the specified strength) or at an age requested by others.

Reinforcing Steel Observations:

- Verify the size, number and placement of reinforcing steel and check general form dimensions prior to placement of concrete, per construction drawings.

Structural Steel Observations and Testing:

- Terracon recommends that the general contractor schedule a pre-erection meeting to discuss the erection sequence, review welding and bolting requirements and to review welder certification records.
- Provide a Certified Welding Inspector (CWI) in the field to visually observe accessible field bolted/welded connections in accordance with applicable AISC and AWS standards.
- Perform visual inspections of elevated metal decking for placement including overlap, fastener spacing, supports at openings and penetrations, and puddle welds pattern, size and quality.
- Terracon will observe any shear studs in association with composite concrete decks for number, pattern, and bond.
- Utilize an Ultrasonic Flaw detector to determine the quality of complete joint penetration welds such as moment connections or splice connections. If the

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base material has a thickness of 5/16" or greater, Terracon recommends that those welds be tested by the Ultrasonic Method in accordance with AWS D1.1.

- Perform visual inspections of 100% of completed accessible welds to verify that the welds meet the visual acceptance criteria of AWS D1.1.

Asphalt Observations and Testing:

- The Terracon scope of services includes observation of the asphalt paving operations, sampling asphalt and conducting laboratory tests. These services may be provided on a part-time or full-time basis as authorized by the client.

Project Management/ Administration:

- A project manager will be assigned to the project to review the daily activity and assist in scheduling the work. Field and laboratory tests will be reviewed prior to submittal. The project manager will be responsible for maintaining the project budget and will oversee the preparation of the final report.

Exclusions

The following services are excluded from our scope of services. We can provide a fee for these services if requested.

- Materials Verifications
- Onsite Concrete Curing Facility
- Building Envelope Testing

Terracon provides full service building enclosure consulting, commissioning, and testing services. Our local, experienced staff provides peer review of construction documents, roofing and waterproofing design services, periodic site visits for quality control/quality assurance, testing of air barriers, air infiltration and water penetration of masonry and fenestrations, roof uplift testing, electronic field vector mapping of roof membranes, and other related enclosure observation and testing services. Terracon would be pleased to provide a proposal to assist you with these services on your project.

D) REPORTING

Results of field tests will be submitted verbally to available personnel at the site. Written reports of field tests and observations will be distributed within five business days. Test reports will be distributed via electronic distribution unless otherwise requested. Please provide Terracon with a report distribution list prior to the beginning of the project. The list should include the company name, address, contact person name, phone number, and e-mail address for each person.

Our reported test locations will typically be estimated by pacing distances and approximating angles and elevations from local control data (staking and layout lines) provided by others on

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site. The accuracy of our locations will be dependent on the accuracy, availability and frequency of the control points provided by the client and/ or contractor.

CMELMS™ Management System

In order to provide our clients with real-time field and laboratory data management and reporting, Terracon developed and maintains an automated application that we call CMELMS. The acronym stands for Construction Materials Engineering Laboratory Management System and is utilized by construction materials engineering and testing operations in our offices.

CMELMS is a complete and comprehensive field and laboratory testing data and results management system. It automates the delivery of our testing and inspection information and can be used anywhere with an internet connection or through a wireless device. Data (test results and inspections) can be entered into the application right from the project site so that project managers and engineering staff have real-time access to the field data. Final Client Reports are produced in the same application, which allows us to achieve better communication, more consistency, and faster turnaround of reports on the project.

Report Turnaround Time

Our Project Managers and/or field technicians will report failing tests or non-conformance items immediately to the designated parties and will typically have digitally-signed reports distributed by the end of the next business day. As stated, using our CMELMS software and our field reporting and communication services and capabilities, the test results and inspection information is quickly entered into the system and a report produced. Non-deviation reports will typically be digitally signed and distributed within 3 to 5 business days of service. Laboratory test reports will typically be digitally signed and distributed within 2 business days of the completion of each test. Our reports can be sent digitally via email, posted to our Client Document Website (CDW), or posted to a designated ftp website.

Terracon's Incident and Injury-Free Culture

Employee safety is a core value of Terracon and we are committed to an Incident and Injury-Free (IIF) workplace. It is our personal and organizational commitment at all levels of the company to everyone going home safe to their family every day. All employees are expected to perform their job assignments with safety as a primary objective. Terracon dedicates the time, resources, and equipment necessary for an IIF environment and no employee will be required to work in unsafe conditions.

E) SCHEDULING

Field testing services will be provided on an "as requested" basis when scheduled by your representative. A minimum of 24-hour notice is required to properly schedule our services. To schedule our services please contact our **dispatcher at (210) 852-2484**. The dispatch office hours are from 7:00 a.m. to 5:00 p.m. Messages left after business hours will be checked the following business day.

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Terracon shall not be held responsible for tests not performed as a result of a failure to schedule our services or any subsequent damage caused as a result of a lack of testing. Terracon recommends that a copy of this proposal be provided to the general contractor, so they understand our scope of services and schedule us accordingly. Please note that the number of tests and trips described in the Scope of Services does not constitute a minimum or maximum number of tests or trips that may be required for this project.

Scheduling Retests:

It is the responsibility of your representative to schedule retests in a like manner to scheduling our original services. Terracon shall not be held responsible for retests not performed as a result of a failure to schedule our services or any subsequent damage caused as a result of a lack of retesting.

Additional Observation and Testing Services:

If you would like us to perform additional observation and testing services, please contact us and we will issue a short Supplement to Agreement form, or Supplemental Proposal, that outlines the additional work to be performed and associated fees. To authorize us to begin additional Observation and testing services, you simply return a signed copy of the Supplemental agreement.

F) COMPENSATION

Based on the project information available for our review, we propose a budget estimate fee of **\$57,085.00**. Services provided will be based on the unit rates included in the attached Budget Estimate. Please note that this is only a budget estimate and not a not-to-exceed price. Many factors beyond our control, such as weather and the contractor's schedule, will dictate the final fee for our services.

For services provided on an "as requested" basis, overtime is defined as all hours in excess of eight hours per day or outside of the normal hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, and all hours worked on weekends and holidays. Overtime rates will be 1.5 times the hourly rate quoted.

A four-hour minimum charge is applicable to all trips made portal to portal (our laboratory) to provide our testing, observation and consulting services. A minimum charge is not applicable for trips to the project site for sample pickup only. All labor, equipment and transportation charges are billed on a portal-to-portal basis from our office.

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You will be invoiced on a monthly basis for services actually performed and/or as authorized or requested by you or your designated representative. Terracon's total invoice fee is due within thirty days following final receipt of invoice. Quantities and costs associated with re-tests, cancellations and stand-by time are not included in our estimated fee.

G) SITE ACCESS AND SAFETY

Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the services and will execute any necessary site access agreement. Terracon will be responsible for supervision and site safety measures for its own employees but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site.

H) TESTING AND OBSERVATION

Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Terracon will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for notifying and scheduling Terracon so Terracon can perform these services. Terracon shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Terracon's performance of testing and observation services shall not relieve contractor in any way from its responsibility for defects discovered in its work or create a warranty or guarantee. Terracon will not supervise or direct the work performed by contractor or its subcontractors and is not responsible for their means and methods.

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I) AUTHORIZATION

This proposal may be accepted by returning an executed copy of the attached "Agreement for Services". This proposal for services and accompanying Exhibits, Schedule of Services and Fees and Agreement for services shall constitute the terms and conditions for our services to be performed for this project. This proposal is valid if authorized within sixty days from our listed proposal date

We appreciate this opportunity of working with you and we look forward to working with you in the future.

Sincerely,
Terracon Consultants, Inc.
(Texas Registration No. F-3272)

A handwritten signature in blue ink that reads 'Ignacio macias'.

Ignacio Macias
Assistant Project Manager

A handwritten signature in blue ink that reads 'for Yatish Jakatimath'.

Yatish Jakatimath, P.E.
Department Manager

Attachments:

(1) Exhibit A & B

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**EXHIBIT A
PROPOSED SCOPE OF SERVICES FOR CONSTRUCTION MATERIALS
OBSERVATION AND TESTING
SEG-NAVARRO ISD PLAYGROUND AND PARKING
TERRACON PROPOSAL NO. P90251040**

The proposed scope of services provided by Terracon is described below. The purpose of these services is to observe various components of the construction and conduct specific tests to determine whether or not the materials and construction comply with the project requirements.

These services are designed to provide a level of quality assurance (QA) for the client and are not intended to replace quality control (QC) tests and procedures required by the contractors and their suppliers. Terracon requires a complete set of construction plans and specifications approved for construction and any addenda or revisions approved during the construction process that would affect the construction related to the requested QA services.

If additional services are needed to comply with the construction documents, Terracon should be contacted and requested to modify our proposed scope and estimated cost. The contractor has the responsibility to be familiar with the project requirements and to contact Terracon a minimum of 24 hrs. (one business day) prior to the time our services will be required. Terracon is not responsible for providing specified services if the client does not authorize Terracon to provide the services or if the contractor does not provide adequate notification for our scheduling purposes.

Terracon will provide construction observations and testing services requested by the client as described in our "Scope of Services" in general accordance with the normal standard of care. Our scope of services does not include any design, design review, construction safety, trench safety, construction supervision, or construction management services. Terracon personnel do not have the responsibility or authority to stop the contractor's work, or to accept or reject any construction materials or workmanship, even if they do not comply with the project requirements.

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BUDGET ESTIMATE (Exhibit B)

P90251040 - NAVARRO ISD DRIVES, PARKING, AND PLAYGROUNDS

Service	Quantity	Unit	Unit Rate	Estimate
Earthwork Observation and Testing				
Engineering Technician II, (min. 4 hours)	240	hour	\$80.00	\$19,200.00
Moisture Density Relationship (ASTM D-698)	4	each	\$300.00	\$1,200.00
Moisture Density Relationship (ASTM D-1557)	1	each	\$350.00	\$350.00
Minus No. 200 Sieve Analysis (ASTM D-1140)	5	each	\$95.00	\$475.00
Atterberg Limits (ASTMD-4318)	5	each	\$95.00	\$475.00
Lime Series	3	each	\$500.00	\$1,500.00
Nuclear Density Gauge	55	trip	\$25.00	\$1,375.00
Vehicle Charge	60	trip	\$30.00	\$1,800.00
			Sub-total	\$26,375.00

Assumptions: This estimate is based on 40 trips (4 hrs portal to portal) for pad select fill /subgrade testing of playgrounds and canopy areas with an estimated pad thickness of 5 feet assumed to achieve a PVR of 1". This estimate also includes 20 trips for testing of lime treated subgrade and base course on parking lot areas. The contractor schedule was not available for review.

Reinforcing Steel Observation

Engineering Technician II, (min. 4 hours)	32	hour	\$80.00	\$2,560.00
Vehicle Charge	8	trip	\$30.00	\$240.00
			Sub-total	\$2,800.00

Assumptions: This estimate is based on 8 trips (4 hrs portal to portal) for reinforcing steel observation. The contractor schedule was not available for review.

Concrete Observation and Testing

Engineering Technician II, (min. 4 hours)	64	hour	\$80.00	\$5,120.00
Engineering Technician I, (min. 3 hours)	24	hour	\$75.00	\$1,800.00
Compressive Strength Tests (ASTMC-39 4"x8")	80	each	\$20.00	\$1,600.00
Vehicle Charge	24	trip	\$30.00	\$720.00
			Sub-total	\$9,240.00

Assumptions: This estimate is based on 16 trips (4 hrs portal to portal) for concrete observation and testing. This estimate also includes 8 trips (2 hrs portal to portal) to the project site to pick up concrete test cylinders cast the previous day. The contractor schedule was not available for review.

This estimate is based on the following number of trip for each of this structures:

- Intermediate canopy footings and grade beams - 3 trips
- Intermediate canopy slab - 1 trip
- Elementary footings canopy - 3 trips
- Elementary canopy slab - 1 trips
- Playground relocation -3 trips
- Headwall- 3 trips
- Sidewalk/ Curb- 2 trips

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Structural Steel Observation

Certified Welding/NDT Inspector (CWI), (min. 4 hours)	24	hour	\$150.00	\$3,600.00
Vehicle Charge	6	trip	\$30.00	\$180.00
			Sub-total	\$3,780.00

Assumptions: This estimate is based on 6 trips (4 hrs portal to portal) for structural steel observation of field welds. The contractor schedule was not available for review.

Asphalt Testing and Observation

Asphalt Series	3	each	\$400.00	\$1,200.00
Engineering Technician II, (min. 4 hours)	72	hour	\$80.00	\$5,760.00
Nuclear Density Gauge	6	trip	\$25.00	\$150.00
Vehicle Charge	6	trip	\$30.00	\$180.00
			Sub-total	\$7,290.00

Assumptions: This estimate is based on 6 full days (12 hrs portal to portal) for asphalt observation an testing. The contractor schedule was not available for review.

ADMINISTRATION

Project Management	40	hour	\$160.00	\$6,400.00
Clerical	15	hour	\$80.00	\$1,200.00
				\$7,600.00

Estimated Structure Work Total \$57,085.00

AGREEMENT FOR SERVICES

This **AGREEMENT** is between Navarro ISD ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the SEG-Navarro ISD Playgrounds & Parking project ("Project"), as described in Consultant's Proposal dated 01/29/2025 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. When Consultant subcontracts to other individuals or companies, then consultant will collect from Client on the Subcontractors' behalf. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
- 6. LIMITATION OF LIABILITY. CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.**
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$2,000,000 occ / \$4,000,000 agg); (iii) automobile liability insurance (\$2,000,000 B.I. and P.D. combined single

limit); (iv) umbrella liability (\$5,000,000 occ / agg); and (v) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Unless otherwise stated in the Proposal, Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to unsafe site conditions. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes.

Consultant: **Terracon Consultants, Inc.**

Client: **Navarro ISD**

By:  Date: **1/31/2025**

By: _____ Date: _____

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