



May 23, 2019

Mr. Mark Lewis
Federal Parking, LLC
1058 West Club Boulevard
Suite 222, OA-2
PO Box 221
Durham, NC 27701

Re: **Federal Parking – Parking Deck
Durham Veterans Assistance Medical Center Campus
Vertical Expansion Feasibility Study**

Dear Mr. Lewis:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to Federal Parking, LLC (“Client”) for providing professional consulting services related to the proposed vertical expansion of the existing parking deck located on the Durham Veterans Assistance Medical Center campus in Durham, NC.

RELEVANT EXPERIENCE

Project Team Parking Experience

- Kimley-Horn offers a complete range of parking and structural consultation services. With more than 100 dedicated parking professionals and 155 structural engineers focused on four key parking components – strategic planning and management, fully-engineered design and construction, technology, and maintenance and restoration – our firm has provided parking services on more than 250 parking structures (150,000+ spaces) across the country in the last 15 years.

PROJECT UNDERSTANDING

The Client is currently evaluating options for vertically expanding an existing parking deck, providing additional parking, hotel space, or other mixed-use occupancy. The Client desires to understand the feasibility of vertically expanding the structure. The feasibility is to be reviewed in the context of structural implications, functional issues, code related items, and overall constructability to determine if moving on to more detailed analysis is warranted.

Our Scope of Services are based on the following assumptions and notes.

1. The subject property is located on the Durham Veterans Assistance Health Care campus.
2. The parking deck was originally constructed in the 1980s and consists of approximately 1,000 parking spaces.
3. The Client owns and manages the parking deck, and has approximately 60 years remaining on the ground lease.

4. Circa 2001 a feasibility study was performed on the parking deck by others that determined an additional 5 to 6 stories and approximately 1,200 parking spaces could be supported by the existing structure.
5. The Client will provide the previous feasibility study report and available drawings.
6. Structural improvements and maintenance and repair have been completed on this parking deck. Last year approximately \$1,500,000 of structural improvements were implemented.
7. This project will consist of a PHASED approach:
 - a. Phase 1 – A structural feasibility study will be performed to evaluate whether the parking deck was designed for future vertical expansion, review high-level changes in structural code requirements, and identify order of magnitude quantities for anticipated structural modifications anticipated.
 - b. Phase 2 – If requested by the Client, Kimley-Horn can complete a more in-depth structural analysis to determine the uses and number of stories the existing parking deck can support. In addition, Phase 2 will include a condition assessment of the structure, if warranted. This Phase may offer more in-depth quantities of recommended structural modifications. This Phase is currently not included in the Agreement, but can be provided as an additional service once Phase 1 is complete.
 - c. Phase 3 – If requested by the Client, full design of the vertical expansion would be completed, including design of any structural modifications required for the vertical expansion. This Phase is currently not included in the Agreement, but can be provided as an additional service once Phase 1 is complete.

SCOPE OF SERVICES

Task 1 – PHASE 1 Feasibility Study

Kimley-Horn will complete a limited structural feasibility study for the existing parking deck. As part of the feasibility study, Kimley-Horn will provide the following services for the project.

- 1.1 Review plans and previous reports of the parking garage provided by the Client.
- 1.2 Conduct one (1) site visit to perform limited, visual observations of the existing conditions of the structure. Specifically, our observations will focus on the readily apparent conditions of the concrete structural system. This site visit is not intended to be a condition assessment, and does not include documentation of deficiencies in the structure. Kimley-Horn can provide a condition assessment of the structural and waterproofing elements as an additional service.
- 1.3 Perform a limited structural code review to determine the implications of added parking levels such as “high-rise” construction, pedestrian egress capacity, type of construction, and overall building allowable areas. A limited comparison between the current codes and the codes the existing structure was designed under will be completed.
- 1.4 Perform limited structural engineering calculations. Exhaustive or detailed analysis will not be performed. The intent is to determine if expansion is feasible. These calculations will:
 - Determine the approximate existing structural system weight and the percentage increase of adding five or six stories of parking and hotel and/or office.
 - Assess the increased gravity load on columns and walls due to added floors.
 - Assess the increased lateral loads from wind and seismic loading due to added floors.
 - Assess the foundation capacity.

- Assess the column and wall capacity.
- 1.5 Develop a list of code implications and constructability issues that may be expected with an expansion vertically.
- 1.6 Prepare a summary technical memorandum outlining the structural and functional feasibility of added parking levels. The goal of this memorandum is to document any major feasibility or constructability obstacles which may prohibit a vertical expansion prior to proceeding into a more detailed structural analysis.
- 1.7 Provide a list of potential mixed-use livable space systems, such as modular products, that could provide alternative structural solutions.
- 1.8 Participate in one (1) “End of Phase” review conference call with the Client to review findings and recommendations, and to discuss next steps for the project.

Deliverables

- 1.9 Prepare a structural feasibility study report

SERVICES NOT INCLUDED

Any other services, including but not limited to the following, are not included in this Agreement.

1. Geotechnical engineering.
2. Architectural design, Mechanical, Electrical, Plumbing, and Fire Protection.
3. Materials Testing, including but not limited to destructive and non-destructive testing.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope, as well as any changes in the scope the Client requests, will be considered additional services and can be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

1. Budgetary estimate of anticipated construction costs.
2. Detailed structural capacity checks of columns, walls, and footings including the use of 3D structural analysis modeling.
3. Development of framing plans for future levels.
4. Structural design of repairs and strengthening techniques.
5. 3D or 2D models depicting graphical representations of the vertical expansion.
6. Traffic related services.
7. Parking supply / demand modeling.
8. Attend meetings beyond those listed in our Scope of Services.
9. Structural design of structural modifications and/or new mixed-use building.
10. Preparation of Parking technology technical specifications.
11. Green Roof Design Services.
12. LEED and/or SmartPark Program Coordination/Management or Pre-Certification Submittals.

INFORMATION PROVIDED BY OTHERS

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client. The

Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

1. Notice To Proceed.
2. Fully Executed Agreement.
3. Available drawings and reports previously prepared by others for an existing parking deck.

SCHEDULE

We will provide our services as expeditiously as practicable to meet a mutually agreed upon schedule. Once the previous report(s) and available existing documentations are provided by the Client, we anticipate completing the Feasibility Study described in Task 1 within 4 to 5 weeks. Any revision to the schedule indicated below must be reviewed and agreed upon by all parties.

FEES AND BILLING

Kimley-Horn will perform the Scope of Services described in Task 1 for the total lump sum labor fee provided in Table A below.

Individual task amounts are informational only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary. In addition to the labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice (referred to as allocation) to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. All permitting, application, and similar project fees will be paid directly by the Client.

Table A: Kimley-Horn Design Fees

Labor Fee Summary		
Task	Fee Type	Lump Sum Labor Fee
<i>Task 1 – PHASE 1 Feasibility Study</i>	<i>Lump Sum</i>	<i>\$12,900</i>

Additional Estimated Expenses (including allocation) \$ 1,200

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

CLOSURE

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to Federal Parking LLC.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please provide the following information:

Please email all invoices to mlewis1@federalparking.net
 Please copy abudko@federalparking.net


If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.


By: David L. Stricklin, Jr., P.E
Senior Vice President


Jason R. Manners, P.E., LEED AP
Associate

Attachment – Standard Provisions

**(Federal Parking LLC)
A Limited Liability Company**

By: E. Mark Lewis

June 1, 2019

(Date)

Mark Lewis

(Print or Type Name)

Title: Director of Acquisitions & Property Management

(Member or Manager, as authorized)

mlewis1@federalparking.net

(Email Address)

, Witness

(Print or Type Name)

Howard Ebenstein

Kimley-Horn and Associates, Inc.**Hourly Rate Schedule**

Classification	Rate
Analyst	\$115 - \$160
Professional	\$160 - \$200
Senior Professional I	\$200 - \$270
Senior Professional II	\$265 - \$300
Senior Technical Support	\$120 - \$195
Support Staff	\$85 - \$105
Technical Support	\$90 - \$125

Effective through June 30, 2019

Subject to annual adjustment thereafter

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**KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS**

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project

or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section 9 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 9 shall require the Client to indemnify the Consultant.

(10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any

mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) Hazardous Substances and Conditions. Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of North Carolina. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.