

## AGREEMENT FOR THE TRANSPORTATION OF PUPILS

**THIS AGREEMENT FOR THE TRANSPORTATION OF PUPILS**, hereinafter referred to as the "Agreement", is made and entered into this \_\_\_\_\_ day of August, 2012, by and between **CROWLEY INDEPENDENT SCHOOL DISTRICT** with a principal office located at 512 Peach Street, Crowley, Texas 76036, hereinafter referred to as "**DISTRICT**", and **DURHAM SCHOOL SERVICES, L.P.**, a Delaware limited partnership, with its principal office located at 4300 Weaver Parkway, Warrenville, Illinois 60555, hereinafter referred to as "**CONTRACTOR**".

1. Scope of Agreement. CONTRACTOR shall operate and maintain one (1) or more routes and maintain one (1) or more school buses for the transportation of pupils using vehicles provided by DISTRICT and CONTRACTOR.

CONTRACTOR shall provide (a) the daily service for the DISTRICT, and (b) such other transportation as may be specified by the DISTRICT.

- a. The term "daily service", as used herein, is defined as all home-to-school and school-to-home transportation of any students of the DISTRICT that takes place at the beginning or end of the school day for such students.
  - b. The term "other transportation", as used herein, is defined as any transportation of students and DISTRICT personnel other than daily service, including but not limited to transportation to and from extracurricular events.
2. Term. The term of this Agreement shall be for a period of three (3) years beginning July 1, 2012 and ending June 30, 2015. The Agreement shall be renewable for two (2) additional terms of one (1) year, at the option and mutual written agreement of both parties, taking into consideration CONTRACTOR'S performance under the Agreement and cost negotiations, and subject to applicable statutes and regulations.
3. Document Agreement. This Agreement contains all the terms and conditions agreed upon by the Parties and no other agreement, oral or otherwise, including DISTRICT's Request for Proposal, regarding the subject matter of this Contract, or any part thereof, shall have any validity or bind the Parties. The complete Agreement consists of this Agreement and the Proposal of CONTRACTOR, which is incorporated herein by reference. In the event of any conflict between the terms of this Agreement and the Proposal, the terms of this Agreement shall govern.
4. Permits and Licenses. CONTRACTOR, its employees, and its agents shall secure and maintain valid permits, licenses, and certifications as required by law for the execution of this Agreement. Additionally, CONTRACTOR shall secure and maintain a current license for EDULOG, the electronic rider and routing software system.
5. Insurance. CONTRACTOR shall maintain insurance as set forth below during the Agreement period and shall furnish a certificate of insurance for General and Auto Liability coverage and for Workers' Compensation coverage. CONTRACTOR shall furnish new Certificates of Insurance for liability coverage and for Workers' Compensation coverage within thirty (30) days following the placement of new or renewed coverage. Certificates shall provide that a thirty (30) day prior notice of cancellation will be given to the DISTRICT.

General and Auto Liability insurance shall be maintained to protect CONTRACTOR from any claims from damages for personal injury or death, and from damage to property, which may arise from operations of CONTRACTOR under this Agreement. General and Auto Liability insurance shall each have a combined single limit of Five Million Dollars (\$5,000,000). Workers' Compensation insurance shall be maintained as required by law and to protect CONTRACTOR from claims, which may arise from its operation under this Agreement.

6. Hold Harmless Agreement. CONTRACTOR shall hold harmless and indemnify DISTRICT, its Governing Board, Officers, Agents, and Employees from every claim or demand which may be made by reason of any injury to person or damage to property sustained by any person, firm or corporation, to the extent that such injury or damage was caused by any negligent act or omission or willful misconduct of the CONTRACTOR or of any person, firm, or corporation, directly or indirectly employed by CONTRACTOR upon or in connection with its performance under this Agreement.

To the extent permissible by law, DISTRICT shall hold harmless and indemnify CONTRACTOR, its Officers, Agents, and Employees from every claim or demand which may be made by reason of any injury to person or damage to property sustained by any person, firm or corporation, to the extent that such injury or damage was caused by any negligent act or omission or willful misconduct of the DISTRICT or of any person, firm, or corporation, directly or indirectly employed by DISTRICT upon or in connection with its performance under this Agreement.

7. Safety Program. CONTRACTOR shall provide formal safety instruction on a regular basis for all operating personnel assigned to this Agreement. Attendance is required for safety meetings.
8. Independent Contractor. While engaged in carrying out and complying with the terms and conditions of this Agreement, CONTRACTOR is an independent contractor, and neither CONTRACTOR, its employees or its Agents shall be considered to be an Officer, Agent, or Employee of the DISTRICT.
9. Assignments. CONTRACTOR may assign or transfer any of its rights, burdens, duties, or obligations under this Agreement to its parent company, affiliates, subsidiaries, or related legal entities. CONTRACTOR will advise DISTRICT of such assignment or transfer.
10. Subcontracting. CONTRACTOR will not subcontract any of its rights, burdens, duties, or obligations under this Agreement without the written consent of the DISTRICT, except on a short term, interim basis in the event of an emergency. Consent shall not be unreasonably withheld.
11. Force Majeure. CONTRACTOR shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities, commandeering of equipment, materials, products, plants, or facilities by the Government, or any other occurrence which is beyond the control of the CONTRACTOR.
12. Routing and Scheduling. Prior to the start of any service under this Agreement, DISTRICT and CONTRACTOR shall cooperatively establish routes and schedules conforming to the needs of

the DISTRICT. If, at any time during the term of the Agreement, it is determined by mutual consent that service may be improved by revisions to routing, scheduling, or bus assignment, DISTRICT and CONTRACTOR shall plan and institute such changes jointly. CONTRACTOR shall have sufficient notice to review such changes and evaluate the safety considerations. All routes, schedules, and bus stops shall be established by CONTRACTOR on such basis as may be determined by it to be most efficient, but shall be approved by the DISTRICT and shall not be revised without mutual consent and authorization.

13. Contractor's Personnel. CONTRACTOR shall employ and assign for services under this Contract a sufficient number of regular and substitute drivers based on projected basic and supplementary transportation, taking into account the current driver absence rates. CONTRACTOR shall be solely responsible for hiring and discharging its employees. DISTRICT shall have the right to request removal of any of CONTRACTOR's employees from providing services under this Agreement provided that such request is made in writing with the reasons set forth and provided that such request does not violate any laws against discrimination.

CONTRACTOR shall designate one (1) person as its local representative to act as the supervisor for the operations for the DISTRICT. This person shall be available during all regular working hours of school days for the purpose of handling routing, assignments, and operational concerns. The supervisor shall have the authority to act in all matters covered by established policies.

14. Designated Casual Employees (i.e. Athletic Coaches). The DISTRICT has requested that CONTRACTOR use certain employees employed by the DISTRICT for the purpose of having such employees perform certain services. The CONTRACTOR is willing to use such personnel as casual employees (the "Designated Casual Employees") subject to the following terms and conditions:

(a) The employment requirements, work duties and disciplinary actions for the Designated Casual Employees will be governed by CONTRACTOR and shall be administered in the same manner as for all other transportation employees of the CONTRACTOR, including, without limitation license requirements, drug testing, and background checks. The specific work schedules of the Designated Casual Employees shall be limited to Transportation Services as requested from time to time by the DISTRICT, and shall be subject to the approval of the CONTRACTOR.

(b) Any compensation or other benefits or amounts owed to or for Designated Casual Employees, including wages, health, medical, welfare, retirement, or otherwise, and specifically including "Workers Compensation Insurance" and "Unemployment Insurance," shall be the sole responsibility of the DISTRICT. Any and all Workers Compensation claims or other compensation, insurance or benefit claims made by a Designated Casual Employee shall be claims ("Benefit Claims") against the DISTRICT.

(c) The DISTRICT shall hold harmless and indemnify the CONTRACTOR and its officers, agents and employees ("Contractor Indemnified Parties") from (i) Benefit Claims and (ii) every claim or demand which may be made by reason of any injury to person or damage to property sustained by any person, firm or corporation, caused by a Designated Casual Employee.

(d) The DISTRICT, at its own expense and risk, shall defend any legal proceeding that may be brought against any CONTRACTOR Indemnified Parties on any claim or demand (including

Benefit Claims) covered by Paragraph (c) of this Section 14 and shall satisfy any judgment that may be rendered against the CONTRACTOR Indemnified Parties.

(e) The DISTRICT represents to the CONTRACTOR that the provisions relating to the Designated Casual Employees as set out in this Agreement comply with all applicable laws, rules and regulations of the State of Texas, its political subdivision and agencies and other governmental bodies and instrumentalities.

15. Record Keeping and Accident Reports. CONTRACTOR will be required to provide any and all operational records related to the provision of services under this Agreement and kept in the ordinary course of business to the DISTRICT within 30 days of DISTRICT's request for such records. DISTRICT shall maintain the confidentiality of CONTRACTOR's records.

All equipment involved in an accident shall be reported as defined by law. Accidents involving the CONTRACTOR'S equipment or personnel while operating for the DISTRICT shall also be reported to the DISTRICT. If requested by the DISTRICT, pupil injuries not involving acceleration, deceleration, or movement of the bus may also be reported to the DISTRICT on forms provided by the DISTRICT.

16. Payments for Services. On or about the first business day of each month the CONTRACTOR shall submit invoices in the form and number required by the DISTRICT for all services performed under this Agreement. Payment for such services will be made within a reasonable time thereafter, not to exceed ten (10) working days. In the event sums due and payable are not received within thirty (30) days, a late charge of 1.5% per month of the outstanding balance will be assessed upon the account. In the event such sums are not received within sixty (60) days, service may be discontinued until such time as the CONTRACTOR has received all sums due.

17. Adjustment of Rates. The rates established in all pricing schedules for this Agreement shall be subject to adjustment once each year. On July 1st in each Agreement year the rates will be adjusted upward by the percentage increase in the Consumer Price Index, All Urban Consumers, Dallas-Fort Worth area for the twelve month period ending March 31st of that year. Said annual increase shall be no less than one and one-half percent (1.5%) or more than five percent (5%). In no event will the adjusted rates be less than the rates for the immediately preceding year.

If, at any time during the term of this Agreement, it is determined that a significant reduction/increase in service is to be instituted due to changes in school start/end times (bell schedules), mandated reduction/increase in routes, change in number of students or miles driven, or any other changes which significantly reduce or increase the existing service level(s) or CONTRACTOR'S cost of operations, the CONTRACTOR and the DISTRICT agree to negotiate an adjustment to the rate schedules. The term "significant reduction/increase" as used herein is defined as any change of ten per cent (10 %) or more.

Notwithstanding anything else in this Agreement to the contrary, in the event any federal, state, local or other government body's statutes, laws, rules, or regulations are enacted/promulgated, the impact of which will materially impact the method and/or costs of CONTRACTOR in connection with providing the services hereunder (e.g., the enactment of mandatory national health insurance for employees), in that event, upon written notice to DISTRICT, CONTRACTOR may request a renegotiation of this Agreement which shall be conducted in good faith. Such renegotiations shall include, but shall not be limited to, the payment schedule, duration of the Agreement, levels of

service, etc. Any modification to this Agreement resulting from such renegotiations shall become effective on a mutually agreed upon date.

18. Equipment Requirements. All buses supplied under this Agreement shall be approved school buses, as defined by applicable statutory or administrative codes, and must meet with the approval of the DISTRICT.

The maximum allowable age of any bus will be twelve (12) years with a maximum average fleet age of eight (8) years

In accordance with DISTRICT requirement, all buses shall indicate "Crowley Independent School District" on the side.

CONTRACTOR shall equip, at its sole cost and expense, each bus with digital video cameras, a Global Positioning System (GPS) and student attendance tracking system.

Regular preventive maintenance shall be practiced on all buses. In addition, buses shall be cleaned inside and out as necessary, and repairs to visible body damage, inside or out, shall be made within thirty (30) days from the date such damage occurs.

Spare buses, either DISTRICT or CONTRACTOR supplied, of appropriate sizes, and meeting all the above requirements, shall be located by the CONTRACTOR at points close enough to the DISTRICT so they may be substituted for regularly assigned buses, if needed, without delay.

At the inception of the Agreement all DISTRICT buses shall meet the following requirements: The buses shall be inspection ready. All seat, foams and body damage repaired. Brakes and tires should be at 50% minimum useful life remaining. CONTRACTOR will not be responsible for major driveline component failures for 6 months unless caused by CONTRACTOR. At the inception of year three of this Agreement all vehicles shall be air conditioned.

It is specifically understood between the Parties that prices under this Agreement do not include modifications to vehicles that might at some point in the future be required by government agencies or DISTRICT. If, during the term of this Agreement, equipment modifications, including seat belts, are mandated CONTRACTOR and DISTRICT shall negotiate in good faith price increases related to such modifications. Such renegotiations shall include, but shall not be limited to, the payment schedule, duration of the Agreement, levels of service, etc. Any modification to this Agreement resulting from such renegotiations shall become effective on a mutually agreed upon date.

19. Use and Maintenance of Facility. CONTRACTOR agrees to pay \$1.00 per year to lease the DISTRICT Transportation Center, hereinafter referred to as "Facility."

CONTRACTOR will be responsible for the day-to-day maintenance and repairs of the Facility due to routine wear and tear including interior painting, cleaning, and non-environmental waste disposal. CONTRACTOR will install long distance telephone service and computer data lines as needed (CONTRACTOR responsible for line charges), and cover the cost of personal property taxes and insurance for CONTRACTOR'S equipment. DISTRICT will provide existing furniture and office equipment. DISTRICT will continue to maintain existing local telephone lines for use by CONTRACTOR.

CONTRACTOR will be responsible for maintenance of any shop and office equipment that DISTRICT provides CONTRACTOR usage of and shall be responsible for all damage caused by the negligence of CONTRACTOR or its employees, excluding normal wear and tear. CONTRACTOR will be responsible for cleaning shop area and waste disposal area.

If CONTRACTOR is successful in securing additional business from nearby Districts or other Customers, then CONTRACTOR may enter into an agreement with the DISTRICT to pay fair market value for the proportionate amount of usage of the Facility required to serve such Districts or Customers. CONTRACTOR must obtain permission from DISTRICT prior to using Facility. Reasonable agreement will not be withheld.

DISTRICT retains the right to request CONTRACTOR to maintain DISTRICT-owned and operated maintenance vehicles at a price that is to be mutually agreed upon.

20. Environmental Indemnification.

a. The DISTRICT hereby represents and warrants that:

- 1) the Property and Facility have been used, operated and maintained at all times in compliance with all applicable federal, state and local environmental quality laws, regulations, rules, policies and rulings; and,
- 2) any and all liquid storage tank(s) (underground and/or above ground) are in good maintenance and repair and are not now leaking; and,
- 3) all applicable federal, state and local registration requirements respecting existing liquid storage tank(s) (underground and/or above ground) and discharge into the soil, ground water, surface water, storm drain system, sewer drain system, etc., have been strictly complied with at all times; and,
- 4) there has been no discharge of oil, gasoline, diesel fuel, solvents, other hydrocarbons or any other hazardous materials into or contamination by such materials or otherwise of the soil, ground water, surface water, storm drain system, sewer drain system, etc., or any other pollution from any use, operation and/or maintenance of the Property and Facility at any time prior to the date hereof.

b. The DISTRICT shall comply with all applicable federal, state and local environmental quality laws, regulations, rules, policies, and rulings related to use, maintenance and operation of the Property and Facility at all times prior to, during and after this Agreement.

c. The CONTRACTOR shall comply with all applicable federal, state and local environmental quality laws, regulations, rules, policies, and rulings related to its use, maintenance and operation of the Property and Facility at all times during this Agreement after the DISTRICT complies with the testing, inspection, and initial repair or replacement provisions herein on the following terms and at the expense of the DISTRICT:

- 1) As soon as practicable after the date hereof but prior to CONTRACTOR taking possession of the Facility, the DISTRICT, shall provide the CONTRACTOR

- with a written report regarding existing liquid storage tanks(s), including tank size, type, and construction, piping type and construction, and the year of installation and current or future modifications that must be made in order to comply with any federal, state, local or insurance requirements.
- 2) The DISTRICT shall conduct precision tank testing of all liquid storage tanks, performed by a certified tank testing firm acceptable to the CONTRACTOR, which firm shall provide to the DISTRICT and the CONTRACTOR a written report indicating the condition of the tank(s).
  - 3) The DISTRICT shall make any needed repairs, modification, tank replacement and environmental clean-up required as a result of the tank test report and in order to comply with all applicable federal, state and local requirements.
  - 4) In the event a tank develops a leak during the term of this Agreement after the DISTRICT complies with the testing, inspection, and initial repair or replacement provisions herein, the DISTRICT shall make any needed repairs, modification, tank replacement and environmental clean-up required as a result of any future tank test reports(s) and in order to comply with all current and future federal, state and local requirements.
  - 5) In the event a tank is required to be taken out of service due to a leak or in order to comply with environmental quality requirements during the term of this Agreement, and the CONTRACTOR is then required to fuel vehicles at a location off the Property, the DISTRICT shall reimburse the CONTRACTOR for the price differential between on-site fueling and other costs associated with such fueling including extra personnel and mileage expenses, for the duration of such period.
- d. The DISTRICT shall have full responsibility for the proper removal and disposal of any and all existing hazardous material stored on-site prior to the commencement of the CONTRACTOR'S occupation of the Property or Facility.
- e. The CONTRACTOR shall have no liability for any matters relating to hazardous or toxic conditions of the Property and Facility, environmental cleanup and disposal, or of violations of environmental quality laws (except for liability arising out of or related to the willful or negligent acts of the CONTRACTOR.)
- f. The DISTRICT hereby agrees to indemnify and hold the CONTRACTOR harmless from and against any loss, cost, or expense, including reasonable attorneys' fees, damages, claims or liability arising out of or related to the use, maintenance and operation of the Property and Facility related to environmental quality matters affecting the Property and Facility including without limitation, contamination of soil, surface water or ground water, personal injury or property damage and compliance with all applicable federal, state and local requirements affecting environmental quality (except for liability arising out of or related to the willful or negligent acts of the CONTRACTOR.)
- g. The CONTRACTOR hereby agrees to indemnify and hold the DISTRICT harmless from and against any loss, cost, or expense, including reasonable attorneys' fees, damages, claims, or liability arising out of or related to the willful or negligent acts of CONTRACTOR related to environmental quality matters affecting the Property or Facility but only to the extent that such damage or claim arose out of the willful or negligent acts of the CONTRACTOR.

- h. The indemnification obligations of paragraphs "f" and "g" shall survive the termination or expiration of this Agreement.
21. Fuel. Fuel shall be paid for and provided by DISTRICT.
22. Termination of Agreement. If either Party refuses or fails to perform services as required as specified in this Agreement, or any separable part thereof, the other Party may, without prejudice to any other right or remedy, serve written notification upon it of intention to terminate and, unless within forty-five (45) days after service of such written notice of the condition or violation the party in breach shall cease and make satisfactory arrangements for the correction thereof, this Agreement shall, upon the expiration of the forty-five (45) days, cease and terminate.
23. Notices: Notices to either party to this Agreement shall be in writing and shall be considered duly served and delivered if such notice is delivered by hand; mailed via the United States mail, certified, return receipt requested; or sent via overnight service. All such notices shall be addressed to:
- |             |   |
|-------------|---|
| DISTRICT:   | Crowley Independent School District<br>Attention: Dwayne Jones, Executive Director<br>of Business Services<br>512 Peach Street<br>Crowley, Texas 76036<br>Telephone: (817) 297-5800 |
| CONTRACTOR: | Durham School Services, L.P.<br>Attn: Contract Administrator<br>4300 Weaver Parkway<br>Warrenville, Illinois 60555<br>Telephone: (630) 821-5400                                     |
24. Discipline. The CONTRACTOR will report serious or persistent misconduct on the part of students to the designated DISTRICT employee. The DISTRICT shall then impose reasonable disciplinary measures upon the students in accordance with its discipline management program.
25. Dispute Resolution. The parties agree to meet and confer in good faith on all matters and disputes under this Agreement. If a dispute is not resolved under the foregoing, and one party informs the other in writing that it reasonably believes that the differences between the parties are not likely to be reconciled through further negotiation, then the parties agree to submit such dispute to binding arbitration under the Commercial Rules of the American Arbitration Association. Such arbitration will be held as promptly as possible in Tarrant County, Texas and will be conducted before a panel of three (3) members. The DISTRICT and the CONTRACTOR shall each select one arbitrator, and the third arbitrator shall be selected by agreement of the other two arbitrators so chosen. The decision of a majority of the arbitration panel will be binding on the parties and may be submitted for enforcement to any court of competent jurisdiction. All costs and expenses associated with the arbitration shall be borne entirely by the non-prevailing party.
26. Choice of Law. This Agreement shall be governed by the laws of the State of Texas.

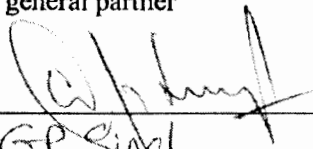


27. Severability. In the event any provision of this Agreement is determined to be illegal or void, the remainder of the Agreement shall remain in full force and effect.
28. Attorney's Fees. If any legal action is brought by either of the parties hereto, it is expressly agreed that the party in whose favor final judgment shall be entered shall be entitled to recover from the other party reasonable attorney's fees in addition to any other relief that may be awarded.
29. IN CONSIDERATION of the performance on the part of the CONTRACTOR of the terms of this Agreement, the DISTRICT agrees to pay the CONTRACTOR the following sums for pupil transportation services rendered.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above.

**DURHAM SCHOOL SERVICES, L.P.**

By: Durham Holding II, L.L.C.,  
Its general partner


By: 

Name: GP Singh

Title: SVP Commercial Development

Date: 8/31/12

**CROWLEY INDEPENDENT SCHOOL  
DISTRICT**

By: 

Name: DWAYNE JONES

Title: EXECUTIVE DIRECTOR - BUSINESS

Date: 8/31/12

SCHEDULE A  
Based on Bid Alternate Proposal Rates

- A. Daily Home-to-School and Special Education Transportation Service (using non-air conditioned buses)\*:

BUS CAPACITY	DAILY RATE TO 4.0 HOURS	DAILY RATE PER BUS HOUR TO 4.0 HOURS
Up to 77 AM/PM Routes	\$177.15	\$21.85
Regular Mid Day Route	\$38.75	N/A

- B. Extended Year Home-to-School and Special Education Transportation Service\*:

DAILY RATE UP TO 4.0 HOURS	DAILY RATE PER BUS HOUR OVER 4.0 HOURS
\$177.15	\$21.85

- C. Rates for "other transportation" using buses regularly assigned to morning and afternoon home to school transportation services\*.

RATE PER BUS HOUR	MINIMUM CALL OUT CHARGE
\$21.85	\$46.50

- D. Rates for Bus Assistants: DISTRICT will compensate CONTRACTOR for Assistants used on routes at \$13.13 per hour. Billable time is to be based on total driving time, including layover time. For Assistant's time in excess of forty (40) hours per week, the charge will be one-and-a-half times the hourly rates as stated.
- E. Performance Bond: DISTRICT may require CONTRACTOR to furnish a performance bond in accordance with the requirements of this Agreement. If DISTRICT elects to require the CONTRACTOR to provide a performance bond, it shall be separately invoiced to the DISTRICT and paid by the DISTRICT.

**SCHEDULE B**  
Based on Negotiated Rates

A. Non-School Bus Vehicle Maintenance:

RATE PER HOUR	ADDITIONAL CHARGES FOR PARTS ABOVE ACTUAL COST (%)
\$36.75	10%

B. Rates for "other transportation" when DISTRICT's personnel drive the buses and are paid by the DISTRICT:

BUS CAPACITY	RATE PER BUS HOUR	MINIMUM CALL OUT CHARGE
ALL	\$7.45	\$7.45

C. Rates for "other transportation" when DISTRICT's personnel drive the buses and are paid by the CONTRACTOR for the driving portion of the trip:

BUS CAPACITY	RATE PER BUS HOUR	MINIMUM CALL OUT CHARGE
ALL	\$23.25	\$7.45

\*All time and mileage charges for all transportation trips shall begin and end at the transportation center, and shall include total driver's time, including time for bus pre-trip inspection, checkout, layover time, child check and post-trip cleanup. For driver's time in excess of forty (40) hours per week, or eight (8) hours in any one (1) day, the charge will be one-and-a-half times the hourly rates stated above.

D. Rates for State Inspections: DISTRICT will compensate CONTRACTOR for CONTRACTOR's labor required for vehicle inspections performed by the State at the rate of \$15.00 per inspection.