

**2023 ECOPASS CONTRACT
RTD/CITY AND COUNTY OF DENVER,
FOR DENVER INTERNATIONAL AIRPORT**

This EcoPass Contract (the “**Contract**”), made effective January 1, 2023 (the “**Effective Date**”) between the Regional Transportation District (“**RTD**”) and the City and County of Denver (the “**City**” or “**Applicant**”), through and on behalf of its Department of Aviation (“**DEN**”), is to provide for the purchase and administration of Eco Passes by DEN for all Eligible Employees (as defined below) of approved businesses located within the Denver International Airport’s (“**the Airport**”) Terminal and Concourses (“**Terminal Complex**”) described in Attachment A. The City and RTD may hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

- A. RTD is authorized by the Regional Transportation District Act, C.R.S. §§ 32-9-101, *et seq.*, as amended (the “**RTD Act**”), to develop, maintain, and operate a mass transportation system for the benefit of the inhabitants of its District (as defined by the RTD Act).
- B. Pursuant to applicable law, both RTD and the City may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each Party.
- C. RTD currently operates a variety of bus, light rail, commuter rail, and other transit services in and around the City and sells various fare media products including pass programs to utilize RTD’s transit services.
- D. City desires to participate in the EcoPass Program (the “**EcoPass Program**”) for employees working in the Terminal Complex. This program makes certain RTD transit services available to Eligible Employees (defined below) in accordance with the terms and conditions of this Contract.

In consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. General

1.1 **Term.** This Contract is valid and effective from January 1, 2023, through and including December 31, 2023 (the “**Term**”), or until terminated by the Parties in writing, whichever is sooner.

1.2 **Termination.**

- (a) In addition to RTD’s rights to terminate this Contract in the event of default by DEN, either Party may terminate this Contract at its sole discretion by giving at least 60 days’ prior written notice to the other Party.

- (b) RTD will suspend any active EcoPasses on the termination date and shall issue a refund to DEN, pro-rated for any period of available use.
- (c) All provisions of this Contract that provide rights or create responsibilities for the Parties after termination will survive termination of this Contract.

1.3. **Contract Discussions.** Discussions for the 2024 contract year will begin no earlier than August 2023. To begin such discussions, DEN shall submit its 2023 Master List of Eligible Employers to RTD by no later than October 31, 2023. A list received after this date may delay the activation of the 2024 passes.

1.4 **Attachments.**

Attachment A – Boundaries of the Terminal Complex

Attachment B – 2023 Master List of Eligible Employers

Attachment C – Pricing Matrix

2. **Contract Requirements.**

2.1 All Concessionaires (defined below) operating within the defined Terminal Complex described on Attachment A are eligible to participate in the EcoPass Program.

2.2 DEN is required to provide to RTD a list of all Eligible Employers and number of Eligible Employees at least 30 days prior executing this Contract, which information is subject to verification by RTD.

2.3 Pricing will be based on the pricing matrix provided in Attachment C. The City will purchase Eco Passes from RTD at the annual rate per Eligible Employee described in Attachment C. DEN shall pay the full annual rate per Eligible Employee described in Attachment C to RTD.

2.4 EcoPasses will be offered to Eligible Employees at no cost to such employees.

3. **Eligibility.** DEN must purchase EcoPasses for all Eligible Employees of listed Eligible Employers pursuant to this Contract.

3.1 **“Concessionaire”** is defined as a legal entity that operates a business at DEN through a Concession Agreement, selling goods to or performing services for the travelling public. All Concessionaires operating within the Terminal Complex, as described on Attachment A, are eligible to participate in the DEN’s EcoPass Program; those actually participating on the Program are collectively called the **“Eligible Employers.”** The **2023 Master List of Eligible Employers** under this Contract are listed in Attachment B.

3.2 **“Eligible Employees”** are full-time employees working for an Eligible Employer. Each Eligible Employer must include in the Program all full-time employees working at the Terminal Complex. Each Eligible Employer may choose whether to include or exclude part-time

employees working at the Terminal Complex. Part-time employees are defined by the applicable Eligible Employer.

3.3 Ineligible Employers and Employees. Businesses that may be operating at DEN but are not eligible to participate in DEN's EcoPass Program include but are not limited to: Concessionaires operating outside the Terminal Complex; off campus operators; independently contracted operators; subcontractors; and other entities whose operations are uniquely incompatible with participating in the EcoPass program, as determined by DEN. An ineligible employee is defined as being a person who may work at the Airport but is not employed by an Eligible Employer within the Terminal Complex, or who does not meet the definition of Eligible Employee stated above, or who lives outside the RTD District.

4. Documentation Requirements. The Master List must include Eligible Employer name, location, phone number, and total Eligible Employees. The same documentation is required for new Eligible Employers located within the Terminal Complex that may be added to the Master List during the Term. Upon verification, RTD shall notify the City of approval within ten business days. RTD cannot guarantee that new smart cards will be activated before year-end if the Master List is submitted to RTD after October 31, 2023. A new Master List must be submitted by the City each year.

5. Variance in Number of Employers and Employees. The Parties agree that the number of Eligible Employers and Eligible Employees may vary slightly during the year; therefore, it is agreed that the City will have no obligation to pay for Eligible Employees of new Eligible Employers who move into the Terminal Complex after January 2023; such new Eligible Employers will be added to a revised Attachment B, which revision will not be considered a formal amendment to this Contract. RTD is not obligated to refund or credit the pro-rated pass value for Eligible Employers and Eligible Employees who leave the Terminal Complex during the Term.

6. DEN/RTD Employee Confirmation. RTD shall have the right to confirm or survey the Eligible Employers located within the Terminal Complex. Any Eligible Employer for which requested audit information is not provided shall be removed from the eligibility list and refused additional EcoPasses for the Term.

7. Payment Terms. In accordance with the terms and conditions of this Contract, the City shall pay RTD the total amount described in Attachment C as determined by the information provided in Attachment B. Payment shall be made within 30 days of the City's full execution of this Contract. If payment is not made by that date, RTD will charge interest at the rate of 1% compounded monthly on all balances due pursuant to Section 7. DEN shall pay RTD an additional 3% processing fee for any credit card payments. DEN shall have the opportunity to contest any invoice. RTD may, at its option, suspend the issuance of EcoPasses and or suspend Eligible Employer account(s) until such payments are received. RTD's deposit of a check does not constitute acceptance of the Contract. If RTD does not approve the Contract, RTD will issue a refund check to DEN within 30 days of refusal.

8. Default and Remedies.

8.1 In addition to all other legal remedies, RTD shall have the right to immediately suspend or deactivate EcoPasses held by DEN Eligible Employers and all Eligible Employees on the date of a missed payment. RTD may alternatively allow the Contract to continue and charge interest at a rate of 1% compounded monthly on all balances due. RTD's failure to terminate this Contract immediately after any missed payment shall not constitute a waiver of RTD's right to terminate for any future missed payment.

8.2 RTD may cancel any or all individual EcoPasses and/or immediately terminate this Contract, and DEN shall have no right to reimbursement of unused balances, in the event that (i) RTD determines that the information provided by DEN has been falsified and/or EcoPasses have been given to ineligible persons; (ii) DEN fails to comply with any terms or conditions of this Contract; or (iii) DEN discontinues its business.

8.3 In addition to all other remedies available under this Contract, RTD has the right to immediately confiscate an EcoPass and pursue claims or demands against anyone determined by RTD to have duplicated, altered, or committed unauthorized use of an EcoPass; provided, however, that RTD may not pursue such claims or demands against the City based on counterfeiting, alleged counterfeiting, or unauthorized use of an EcoPass unless such event is determined by RTD to be the result of the City's gross negligence, criminal or willful misconduct. RTD may also provide any information with respect to such events to law enforcement for prosecution.

9. Notices.

9.1 Any notice required to be given by the terms and provisions of this Contract or by any law or governmental regulation, by the Parties, shall be in writing (unless otherwise required by such law or regulation) and (1) shall be deemed to have been served and given upon personal delivery or (2) shall be deemed to have been served and given upon receipt if sent by electronic mail transmission or (3) shall be deemed to have been served and given two (2) business days after deposited by either registered or certified mail in a United States mail chute or general or branch United States post office with postage fully prepaid thereon with return receipt requested or (4) shall be deemed to have been served and given one business day after being sent by overnight delivery from a location in the United States with a nationally recognized overnight courier service providing for written receipt.

9.2 Notice shall be delivered or addressed to the Parties at the addresses set forth on the below. The Parties may designate different addresses for the mailing of notices, by providing notice to the other Party pursuant to this paragraph.

For the City:

Denver International Airport
8500 Peña Boulevard
Denver, Colorado 80249-6340
Attn: Chief Executive Officer

For RTD:

Regional Transportation District
Attn: Theresa Rinker
1660 Blake St, BLK-12
Denver, CO 80202-1399
Phone: (303) 299-2122
Fax: (303) 299-2600
Email: theresa.rinker@rtd-denver.com

10. **Services.** RTD shall allow each Eligible Employee with a valid EcoPass to ride free of charge on all Regular Services during the Term. “**Regular Services**” include all RTD or RTD contractor-operated local and regional bus service, call-n-ride service, commuter and light rail service, service to and from Denver International Airport, and the Flatiron Flyer. Any RTD operator or Transit Security Officer may request a valid fare or deny boarding to any Eligible Employee without a valid EcoPass. EcoPass is not valid on Special Services as designated by RTD. “**Special Services**” include, but is not limited to, Access-a-Ride and other special event services designated by RTD from time to time.

11. **Liability.** Without waiving the privileges and immunities conferred to either Party by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* (the “**CGIA**”), each Party shall be responsible for any claims, demands, or suits arising out of its own negligence. It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Contract shall be construed as an expressed or implied waiver by either Party of its governmental immunity including limitations of amounts or types of liability or the governmental acceptance by a Party of the liabilities allowable under the CGIA.

12. **RTD Reservation of Rights.** RTD reserves the right to pursue claims or demands against, revoke the Smart Card of, or seek prosecution of anyone, who duplicates, alters, or commits unauthorized use of a Smart Card. Except as is otherwise agreed to in other contracts between RTD and the City, the following apply:

- (a) Nothing in this Contract shall be construed to limit RTD’s right to establish routes or perform any functions authorized by the RTD Act.
- (b) Nothing herein shall be construed to provide DEN with rights to receive any particular routes or levels of service.
- (c) In the event of unforeseeable causes beyond RTD’s control, RTD reserves the right to reduce the level of service and/or reduce the routes. Such unforeseeable causes may include, but are not restricted to, acts of God or of public enemy, acts of government in its sovereign or contractual capacity, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

13. **Miscellaneous.**

13.1 **Merger.** This Contract represents the entire agreement between the Parties regarding EcoPasses for Eligible Employees, and all prior agreements, understandings or negotiations with respect to the subject matter of this Contract will be deemed merged herein. No representations, warranties, promises or agreements, express or implied, will exist between the Parties regarding EcoPasses for Eligible Employees, except as stated herein.

13.2 **Amendment.** This Contract shall not be amended or modified except in writing executed by the Parties and expressly stating that such document is an amendment or modification to this Contract.

13.3 **No Assignment.** Applicant shall not assign this Contract to any other person or entity without prior written permission from RTD.

13.4 **Governing Law.** This Contract will be interpreted and enforced according to applicable federal, State, and local laws, and the applicable rules and regulations promulgated under any of such laws.

13.5 **Authority.** The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the signatories to execute this Contract on behalf of the Parties. The person(s) executing this Contract on behalf of each Party warrant(s) that such person(s) have full authorization to execute this Contract.

13.6 **Severability.** To the extent that this Contract may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Contract, the terms of the Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure will not affect the validity of any other terms or provision hereof.

13.7 **Waiver.** The waiver of any breach of a term hereof will not be construed as a waiver of any other term, or the same term upon a subsequent breach.

13.8 **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, will be strictly reserved to the Parties hereto, and nothing contained in this Contract will give or allow any such claim or right of action by any other or third person under this Contract, including any individual Employee of the Applicant. It is the express intention of the Parties to this Contract that any person or entity other than the Parties receiving services or benefits under this Contract be deemed an incidental beneficiary only.

13.9 **Conflict of Interest.** The Parties agree that no official, officer or employee of RTD or the Applicant will have any personal or beneficial interest whatsoever in this Contract or the work performed pursuant to this Contract in conflict with the applicable Party's ethical standards.

13.10 **Changes in Law.** This Contract is subject to such modifications as may be required by changes in Applicant, federal, State, or local law, or their implementing regulations other than changes in Applicant law enacted following execution of this Contract. Any such required

modification will automatically be incorporated into and be part of this Contract on the effective date of such change as if fully set forth herein.

13.11 **Independent Contractors.** The Parties hereto are independent contractors and not partners or joint ventures of one another. Nothing herein shall be deemed to be a guarantee of the performance of the other Party nor constitute that either Party is an agent or representative of the other.

13.12 **Section Headings.** The captions and headings set forth in this Contract are for convenience of reference only and will not be construed to define or limit its terms and conditions.

[Signatures and Attachments follow]

Contract Control Number: PLANE-202367421-[[This Amendment Number]]
Contractor Name: Regional Transportation District

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202367421-[[This Amendment Number]]
Regional Transportation District

DocuSigned by:
By: Debra A. Johnson
6D0BE27723944E0...

Name: Debra A. Johnson
(please print)

Title: GM/CEO
(please print)

ATTEST: [if required]

DocuSigned by:
By: Aimee Beckwith
4552A02C1DC2448...

Name: Aimee Beckwith
(please print)

Title: Senior Associate General Counsel
(please print)

EXHIBT A

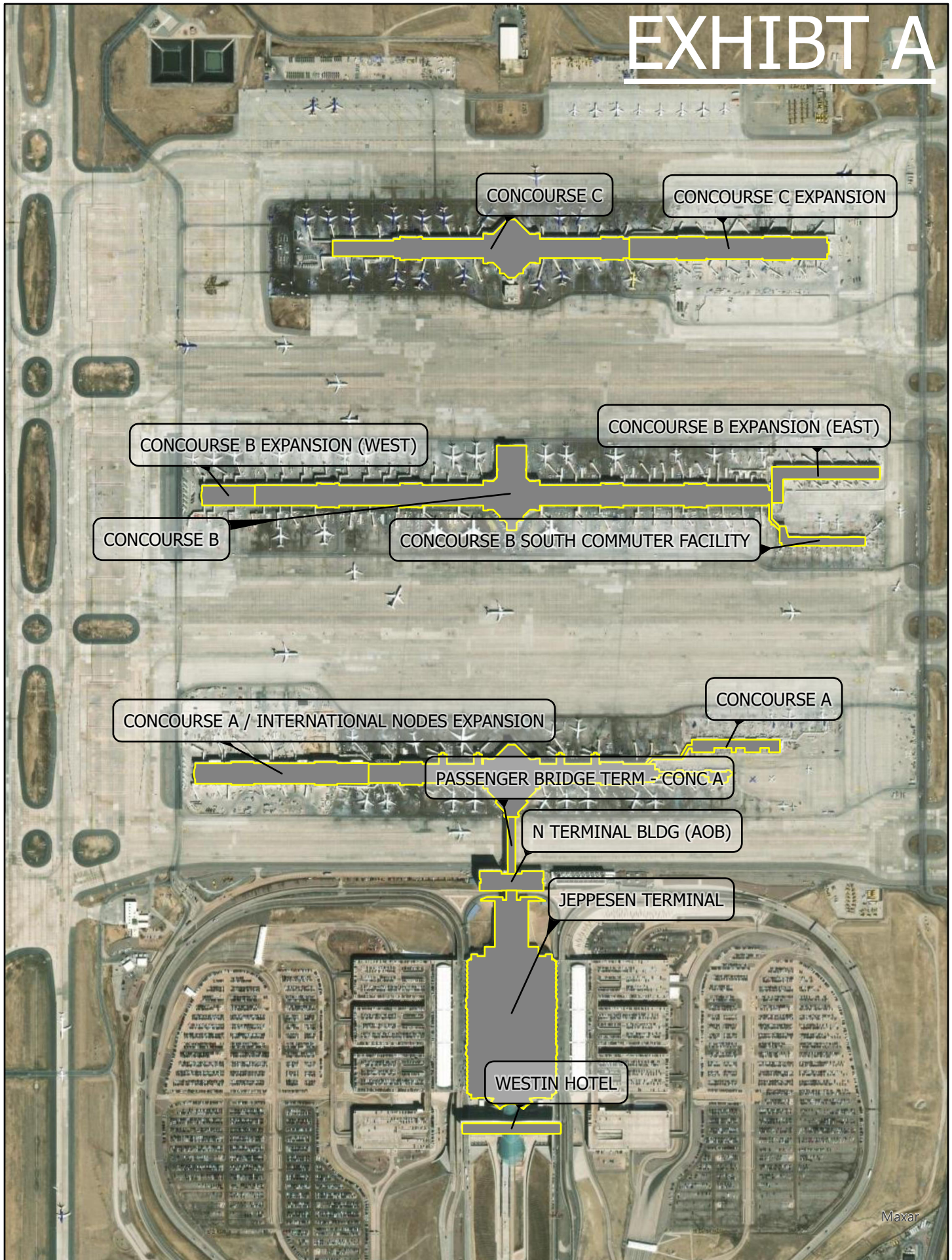


EXHIBIT B

<u>RTD Company Name</u>	<u>Total Employees</u>
Ayala's Inc. @ DEN	18
Canvas Credit Union @ DEN	6
Concessions International @ DEN	149
Delaware North @ DEN	72
Denver Airport Enterprises LLC @ DEN	36
DIA Wine Bar @ DEN	21
Doc 1 @ DEN	10
HMS Host @ DEN	248
Hudson Group/WDFG, NA @ DEN	150
InMotion Entertainment @ DEN	15
JAF Concessions	10
Kabod Coffee @ DEN	57
McDonald's @ DEN (Wonderful One, Inc)	199
Midfield Concession Enterprises, Inc @ DEN	115
Mission Yogurt @ DEN	382
MRG-Denver @ DEN	108
New Belgium Brewery @ DEN	69
Paradies Shops, LLC @ DEN	137
Provenzano Resources, Inc. @ DEN	51
Quiz DIA Holdings LLC @ DEN	122
Skyport Hospitality @ DEN	645
Smarte Carte, Inc. @ DEN	4
Stellar Partners @ DEN	32
Tastes 5280 LLC @ DEN	198
Villa Pizza @ DEN	32
Plaza Premium Group @ DEN	65
Emerging Airport Partners @ DEN	17
The Ave Group, LLC @ DEN	10
World Wide Insurance & Business Services, Inc. @ DEN	9

ATTACHMENT C
PRICING MATRIX

SLA (business location)	Contract Minimum Per Year	1-24 employees	25 - 249 employees	250 - 999 employees	1,000 - 2,999 employees
A	\$1,368	\$68	\$46	\$32	\$22
B	\$1,368	\$64	\$84	\$23	\$17
C	\$2,400	\$128	\$118	\$96	\$103
D	\$2,400	\$1074	\$809	\$632	

SLA D Pricing: 2987 employees x \$632 = amount due \$1,887,784.00