

AMENDMENT NO. 5

TO

AIRLINE OPERATIONS AGREEMENT

Between

CITY OF FRESNO,
A MUNICIPAL CORPORATION

And

SKYWEST AIRLINES, INC.
A UTAH CORPORATION

Dated

SEPTEMBER, 2015

THIS AMENDMENT NO. 5, effective as of July 1, 2010, is entered into between the City of Fresno California, a municipal corporation, (hereinafter referred to as "City") and, SkyWest Airlines, Inc., A Utah Corporation, admitted in good standing to do business in California, (hereinafter referred to as "Airline").

RECITALS

WHEREAS, City is the owner and operator of Fresno Yosemite International Airport located in the City of Fresno, County of Fresno, State of California, hereinafter referred to as "Airport"; and

WHEREAS, City desires to lease to Airline certain facilities located at Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement including incorporated exhibits, documents and instruments; and

WHEREAS, Airline and City (each a "Party"; collectively the "Parties") have heretofore entered an Airline Operations Agreement dated October 25, 2002 ("AOA") covering space occupancy and use, and airfield user privileges, at the Fresno Yosemite International Airport ("Airport"), as amended by Amendment No. 1, dated June 2004, Amendment No. 2, dated July 1, 2005, Amendment No. 3, dated June 16, 2007, and Amendment No. 4, dated March 17, 2008; and

WHEREAS the AOA expired on June 30, 2010, and is currently in a month-to-month holdover per the terms of the AOA, and

WHEREAS the Parties desire to revive, reinstate and amend the AOA, to extend the term and make other changes; and

WHEREAS the Parties recognize that due to various improvements to the passenger terminal at the Airport ("Terminal"), including the installation of common use hardware and software systems, and the implementation of policy and procedures related to common use of airline ticket counters and gates, the Parties wish to amend the space(s) covered by the AOA and the Exhibits attached to the AOA.

NOW, THEREFORE, in consideration of the mutual promises herein, it is hereby agreed as follows:

1. Article 1, Section 1.1- Delete the following definitions:

- F. Airline Common Use Equipment
- G. Airline Common Use Equipment Charge
- H. Airline Common Use Equipment Cost Center
- I. Airline Common Use Equipment Retirement
- U. City Airports
- QQ. Preferential Use Space
- RR. Relocation Cost Reimbursement Allowance
- TT. Shared Use Space
- UU. Shared Use Space Formula

Amend the following definitions:

PP. Preferential Use. Means the right conferred by the Airport to a Class I Airline to use Gate Facilities and Common Use Ticket Counter Positions on a preferential basis **during those periods of time defined by the Common Use Facilities Policy and Procedures.**

2. Article 1, Section 1.1- Add following definitions:

XX. Affiliate Airline. Shall mean any Air Transportation entity that is (i) controlled by, controlling, or under common control with Airline, or (ii) shares an International Air Transport Association (IATA) flight designator code with Airline at the Airport (code sharing partner), or (iii) otherwise operates under the same trade name as Airline at the Airport or uses essentially the same livery as Airline at the Airport. Airline may give the Director thirty (30) days prior written notice that such an Affiliate is no longer to be considered an Affiliate hereunder.

YY. Airport Rules for Airlines/Ground Handlers (Rules and Regs.) Means the manual provided by Director for operating an Airline at Airport.

ZZ. Assigned Common Use Facilities. Means all common use facilities, including, but not limited to: ticket counters and gates, as assigned in accordance with the Common Use Facilities Policy and Procedures Manual.

AAA. Common Use Gate. Means a Gate Facility designated by the City for the use by the Airline, as assigned in accordance with the Common Use Facilities Policy and Procedures manual.

BBB. Common Use Facilities Policy and Procedures (Common Use Policy). Means the policy and procedures as set forth in the manual provided by Director, which describes the procedures agreed to between City and Airlines, for assigning Common Use Facilities for the various classifications of airlines, based on scheduled landings and other criteria, as described therein.

CCC. Common Use Ticket Counter Position. Means the ticket counter position(s) designated by the City for the use by the Airline as assigned in accordance with the Common Use Facilities Policy and Procedures Manual.

DDD. Gate Facilities. Means, but is not limited to, the use and access to a gate door, jet bridge, Common Use computer system, podium(s), counter and aircraft parking position, at a specified location within the passenger terminal for the purposes of operating a commercial air service airline.

EEE. New Entrant. Means any airline or air carrier that desires to begin service at FYI and is not currently operating under a signed AOA.

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Article 2, Section 2.1 shall be replaced with the following:

2.1 Term:

This Agreement shall be effective for a ten-year term commencing retroactively on July 1, 2010 ending on June 30, 2020, subject to earlier termination with or without cause by either Party giving sixty (60) days advance written notice to the other Party.

4. Article 5, Section 5.4 shall be deleted in its entirety and replaced with the following:

5.4 Application of Rental Rates

1. Common Use Area and Ticket Counter Position.

The Terminal Area Rental Rate shall be applied to Common Use Space ("CUS") on the basis of the Common Use Space Formula ("CUSF"). The CUSF is an allocation of the CUS among the Signatory Airlines based on Enplaning Passenger statistics for each month as reported by the Airlines. The Common Use Space is shown on Exhibit "B-1", which is attached hereto and hereby incorporated into this agreement.

- a. Common Use Ticket Counter Position. Terminal ticket counter are assigned in accordance with the Common Use Facilities Policy and Procedures Manual.
- b. Annual Reallocation of Ticket Counters. Airline acknowledges that every July 1st, the possibility of a reallocation of the ticket counters at the sole discretion of the Director of Aviation.
- c. Common Use Ticket Counters.
 - i. The assignment of ticket counters to an Airline in accordance with the Airline's classification and the Common Use Policy.
 - ii. If a Ticket Counter is assigned as Preferential Use and there is a need for use by another Airline, such use shall be granted in accordance with the Common Use Policy, and if such use cannot meet the requirements in the Common Use Policy, such use shall not be granted.
 - iii. All remaining Ticket Counters not already assigned to an Airline may be available for Airlines requesting additional use in accordance with the Common Use Policy.
- d. Assignment of Service. All requests for common use ticket counter access shall be assigned by Director or Designee consistent with the Common Use Policy and the Rules and Regs Manual.

2. Gate Facilities. The Terminal Area Rental Rate shall be applied to Common Use Space ("CUS") on the basis of the Common Use Space Formula ("CUSF"). The CUSF is an allocation of the CUS among the Signatory Airlines based on Enplaning Passenger statistics for each month as reported by the Airlines. The Common Use Space is shown on Exhibit "B-1", which is attached hereto and hereby incorporated to this agreement.
 - a. Annual Reallocation of Gates. Airline acknowledges that every July 1st, the reallocation of the gate(s) will be considered at the sole discretion of the Director of Aviation.
 - b. Gate Facility Assignments.
 - i. Assignments are designated as a Class (I, II, III) Airline in accordance with the Common Use Policy .
 - ii. Assignment of Service. All requests by an Airline for common use gate access shall be assigned by Director or Designee consistent with the Common Use Policy.
3. The Terminal Area Rental Rate, as stated in the Master Fee Schedule as amended from time to time ("Terminal Area Rental Rate"), shall be applied to Exclusive Use Space on a per square foot basis.
 - a. Exclusive Use Space as stated below:
 - i. Room C-129, comprising 219 square feet of passenger terminal as shown in Exhibit "A-1" attached hereto and hereby made a part hereof is Airline's exclusive use space.
 - ii. Room C-159A, comprising 200 square feet of passenger terminal as shown in Exhibit "A-1" attached hereto and hereby made a part hereof is Airline's exclusive use space.
 - iii. Room C-159B, comprising 151 square feet of passenger terminal as shown in Exhibit "A-1" attached hereto and hereby made a part hereof is Airline's exclusive use space.
 - iv. Rooms C-161 and C-165, comprising 813 square feet of passenger terminal as shown in Exhibit "A-1" attached hereto and hereby made a part hereof is Airline's exclusive use space.
 - v. Room C-163C, comprising 140 square feet of passenger terminal as shown in Exhibit "A-1" attached hereto and hereby made a part hereof is Airline's exclusive use space.
4. All other Airport Use Fees shall be applied as defined in the Master Fee Schedule.

5. Article 10 shall be deleted in its entirety and replaced with the following:

ARTICLE 10: INDEMNIFICATION, INSURANCE AND RELEASE

Section 10.1 Indemnification

- A. Except to any extent expressly provided for in the Agreement, and to the furthest extent allowed by law, Airline shall indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in tort or strict liability including damage by fire or other casualty) alleged to have been incurred by City or Airline, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses) arising or alleged to have arisen directly or indirectly out of Airline's: (i) occupancy, maintenance and/or use of Leased Premises; (ii) use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space and/or Shared Use Space, upon which the Leased Premises is located; or (iii) performance of, or failure to perform, this Agreement. Airline's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence or willful misconduct of City.
- B. Airline acknowledges that any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation or creation of an environmental hazard, occurring as a result of or in connection with: (i) Airline's occupancy, maintenance and/or use of the Leased Premises; (ii) Airline's use of any Common Use Space, Exclusive Use Space, Joint Use space and/or Preferential Use Space, upon which the Leased Premises is located; (iii) Airline's activities or the activities of any of Airline's representatives (including, without limitation, any of Airline's officers, officials, employees, agents, volunteers, invitees, subtenants, consultants, subconsultants, contractors or subcontractors), and all reasonable costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any legal requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.
- C. Airline's occupancy, maintenance and use of the Premises, and use of all or any part of Airport, including, but not limited to, use of any Common Use Space, Exclusive Use Space, Joint Use Space and Preferential Use Space, upon which the Leased Premises is located, shall be at Airline's sole risk and expense. Airline accepts all risk relating to Airline's: (i) occupancy, maintenance and/or use of the Premises; (ii) Airline's use of any Common Use Space, Exclusive Use Space, Joint Use space and Preferential Use Space, upon which the Leased Premises is located; or (iii) performance of, or failure to perform, this Agreement

City shall not be liable to Airline and its insurer(s) for, and Airline and its insurer(s) hereby waive and release City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Premises, or all or any part of the Airport, including, but not limited to, use of any Common Use Space, Exclusive Use Space, Joint Use Space and Preferential Use Space, upon which the Leased Premises is located, in any way related to the Airline's operations and activities. This waiver shall not extend to any and all loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct of City.

- D. Airline shall immediately notify City of any occurrence on Airline's use of any Common Use Space, Exclusive Use Space, Joint Use space and Preferential Use Space, upon which the Leased Premises is located, resulting in injury or death to any person or damage to property of any person.
- E. If Airline should contract any work on the Premises or subcontract any of its obligations under this Agreement, Airline shall require each consultant, subconsultant, contractor and subcontractor to indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers in accordance with the terms of this Section.
- F. The provisions of this Section shall survive the termination or expiration of this agreement.

Section 10.2 Insurance

- A. Throughout the life of this Agreement, Airline shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized in writing by City's Risk Manager or his/her designee. The following policies of insurance are required:
 - (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include coverage for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations, and contractual liability with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$5,000,000 aggregate for products and completed operations and \$10,000,000 general aggregate. Airline may substitute Airport Liability insurance for this insurance provided the coverage is as broad as required and the limits of liability are not less than required.
 - (ii) AIRCRAFT LIABILITY insurance shall include coverage for bodily injury to passengers and non-passengers, property damage and cargo legal liability with combined single limits of liability of not less than

\$100,000,000 per occurrence and aggregate for bodily injury, property damage and cargo legal liability for aircraft under 60,000 GTW and \$350,000,000 per occurrence and aggregate for bodily injury, property damage and cargo legal liability for aircraft over 60,000 GTW.

(iii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

In the event Airline purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

- C. Airline shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Airline shall also be responsible for payment of any self-insured retentions. At no time shall City be responsible for the payment of any deductibles or self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Airline shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.
- D. All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Airline shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during this Agreement, Airline shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

- E. The General Liability (or Airport Liability, if applicable), Aircraft Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Airline's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.
- F. Airline shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement. Such evidence of insurance shall be provided City at the following address:
- City of Fresno - Airports Department
Properties Division
4995 E. Clinton Way
Fresno, CA 93727
- G. Upon request of City, Airline shall immediately furnish City with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.
- H. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City hereunder shall in any way relieve Airline of its responsibilities under this Lease.
- I. The fact that insurance is obtained by Airline shall not be deemed to release or diminish the liability of Airline, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Airline. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Airline.
- J. Airline and its insurers hereby waive all rights of recovery against City and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Airline or its officers, officials, employees, agents, volunteers, invitees, consultants, subconsultants, contractors and subcontractors, or its property or the property of others under its care, custody and control. Airline shall give notice to its insurers that this waiver of subrogation is contained in this Agreement. This requirement shall survive termination or expiration of this Agreement.

- K. If Airline should contract any work on the Premises or subcontract any of its obligations under this Agreement, Airline shall require each consultant, subconsultant, contractor and subcontractor to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultants', subconsultants', contractors' or subcontractors' certificates and endorsements shall be on file with Airline and City prior to the commencement of any work by the consultant, subconsultant, contractor or subcontractor.

Section 10.3 Nonliability of City

- A. Without wavier or limitation, City shall not in any event be liable for any acts or omissions of Airline, its officers, officials, employees, agents, volunteers, invitees, consultants, subconsultants, contractors or subcontractors, or for any conditions resulting from the operations or activities of Airline, its officers, officials, employees, agents, volunteers, invitees, consultants, subconsultants, contractors or subcontractors, or for any conditions resulting from the operations or activities of any other Airline, lessee, tenant, concessionaire, vendor, supplier, consultant, subconsultant, contractor, subcontractor or invitee, however caused.
- B. City shall not be liable for Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City.

6. Article 13, Section 13.1 shall be deleted in its entirety.

7. Article 13, Section 13.3(A) shall be modified as follows:

The time of ninety (90) calendar days' written notice, shall be modified to read "sixty (60) calendar days' written notice..."

8. Article 14, Section 14.19(D) shall be modified as follows:

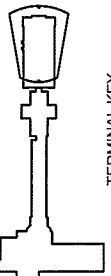
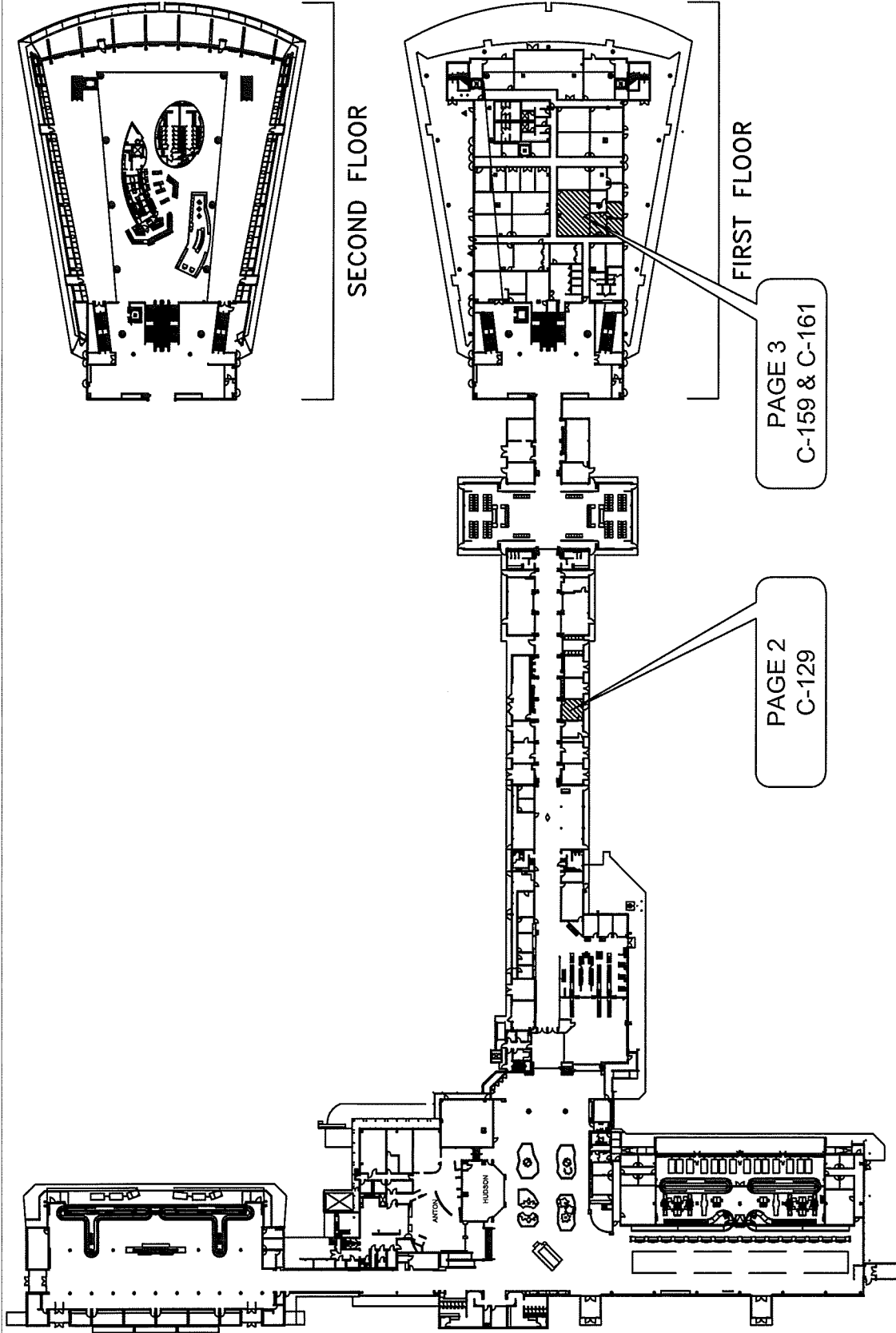
Duty to Notify City. In the event of a release or threatened release of Hazardous Material into the environment that is or could be in violation of Environmental Laws relating to or arising out of Airline's use or occupancy of the Leased Premises or in the event any claim, demand, action or notice is made against Airline regarding Airline's failure or alleged failure to comply with any Environmental Laws, Airline immediately shall notify City by telephone, followed by written notice and shall provide City with copies of any written claims, demands, notices, or actions so made.

9. Exhibits "A" and "B" from the AOA shall be deleted and replaced with Exhibits "A-1" and "B-1", each attached hereto.

10. Except as expressly set forth herein, the AOA and all of the aforementioned Amendments shall otherwise remain unchanged and in full force and effect.

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EXHIBIT A-1



TERMINAL KEY

DEPARTMENT
OF AIRPORTS

DIRECTOR OF AVIATION (INTERIM)
KEVIN R. MEKLE, ARCHITECT



CITY OF FRESNO
DEPARTMENT OF AIRPORTS
4995 EAST CLINTON WAY
FRESNO, CALIFORNIA 93727
PHONE: 559-621-4500

FRESNO YOSEMITE INTERNATIONAL AIRPORT

TERMINAL CONCOURSE SKYWEST LEASES LOCATIONS

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KRA NO. _____
FUND NO. _____
ORG NO. _____
ACTIVITY _____
PROJECT I.D. _____

REVISIONS/REFERENCE
REV NO. _____

APPROVED
OFFICE ENG. _____

CONST. ENG. _____
CITY DESIGN ENG. _____

DR. BY: LNS
CH. BY: MGP
DATE: 7-26-13
SCALE: N/A

CITY DRAWING NO. 25-A-421
SHEET NO. 1

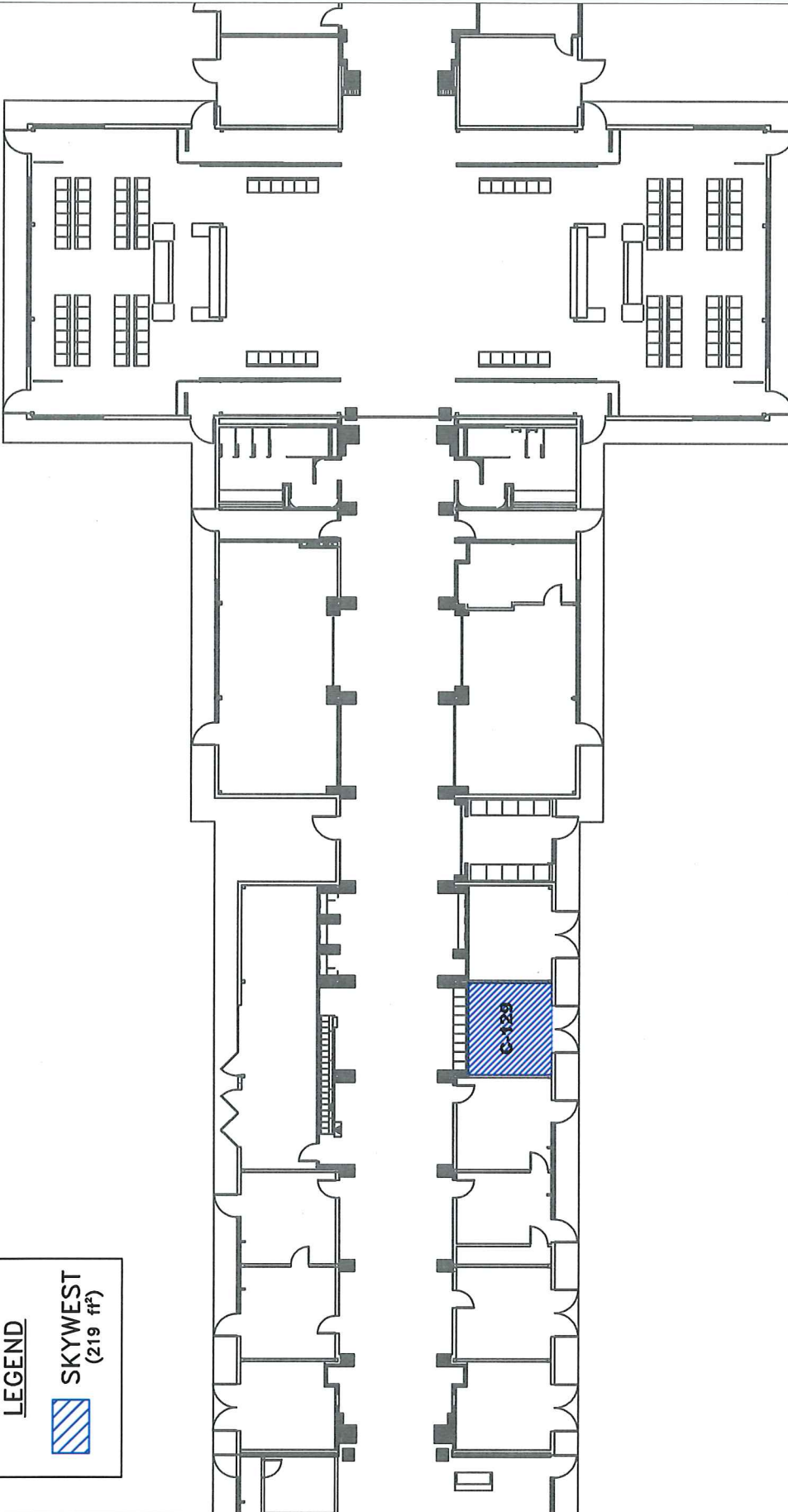
OF 3 SHEETS

FIRST FLOOR

PAGE 3
C-159 & C-161

PAGE 2
C-129

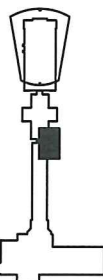
SECOND FLOOR



LEGEND



SKYWEST
(219 ft²)



TERMINAL KEY

DEPARTMENT
OF AIRPORTS

DIRECTOR OF AVIATION (INTERIM)
KEVIN R. MEIKLE, ARCHITECT



FRESNO YOSEMITE
INTERNATIONAL AIRPORT
CITY OF FRESNO
DEPARTMENT OF AIRPORTS
4895 EAST CLINTON WAY
FRESNO, CALIFORNIA 93727
PHONE: 559-621-4500

FRESNO YOSEMITE INTERNATIONAL AIRPORT

FIRST FLOOR TERMINAL CONCOURSE
SKYWEST LEASE C-129

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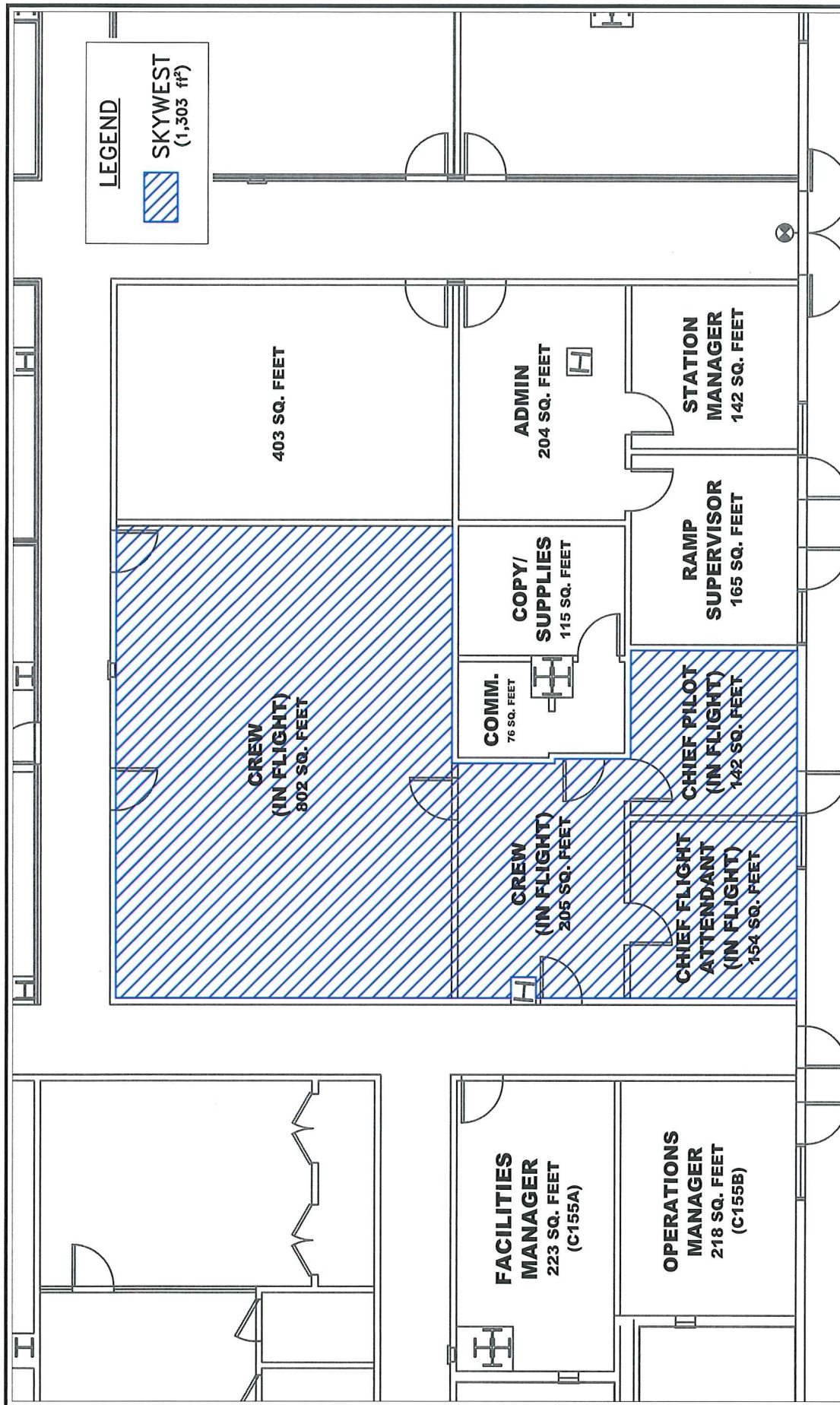
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DR. BY: LNS
CH. BY: MG
DATE: 7-26-13
SCALE: 1" = 10'

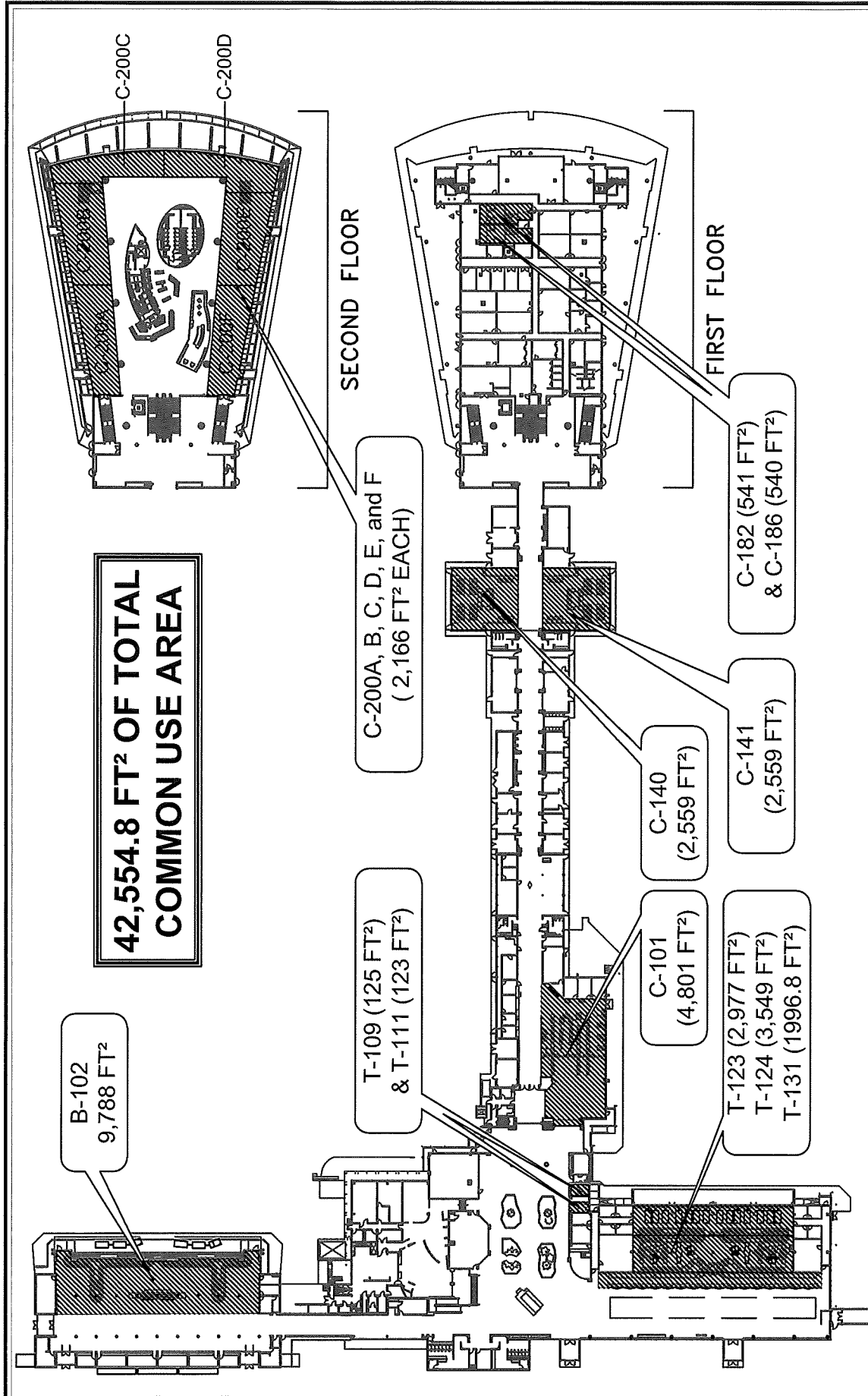
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SHEET NO. 2


OF 3 SHEETS



	DEPARTMENT OF AIRPORTS DIRECTOR OF AVIATION (INTERIM) KEVIN R. MEIKLE, ARCHITECT	FRESNO YOSEMITE INTERNATIONAL AIRPORT FIRST FLOOR TERMINAL CONCOURSE SKYWEST LEASE	KRA NO. _____ FUND NO. _____ ORG NO. _____ ACTIVITY _____ PROJECT I.D. _____	REVISIONS/REFERENCE REV NO. _____
	 CITY OF FRESNO DEPARTMENT OF AIRPORTS 4895 EAST CLINTON WAY FRESNO, CALIFORNIA 93727 PHONE: 559-621-4500	APPROVED OFFICE ENG. CONST. ENG. _____ CITY DESIGN ENG. _____ DR. BY: LNS CH. BY: MG DATE: 7-26-13 SCALE: 1" = 10'	CITY DRAWING NO. 25-A-421 SHEET NO. 3 OF 3 SHEETS	J:\ARCHIVE\25A\25A00421.DWG

EXHIBIT B-1



 TERMINAL KEY	DEPARTMENT OF AIRPORTS DIRECTOR OF AVIATION (INTERIM) KEVIN R. MEKLE, ARCHITECT	FRESNO YOSEMITE INTERNATIONAL AIRPORT CITY OF FRESNO DEPARTMENT OF AIRPORTS 4985 EAST CLINTON WAY FRESNO, CALIFORNIA 93727 PHONE: 559-621-4500	REVISIONS/REFERENCE REV NO. 1 / 25-A-406 CITY DESIGN ENG. PROJECT I.D.	APPROVED OFFICE ENG.
	KRA NO. FUND NO. ORG NO. ACTIVITY	CONST. ENG. DR. BY: LNS CH. BY: MGP DATE: 7-18-13 SCALE: N/A	CITY DRAWING NO. 25-A-410 SHEET NO. 1 OF 1 SHEETS	