

CITY OF HOBBS

ORDINANCE NO. 1131

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF PUBLIC SAFETY


BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the Mayor be and hereby is authorized and directed to execute, on behalf of the City of Hobbs, a Lease Agreement with the New Mexico Department of Public Safety, for property located at 5100 Jack Gomez Blvd., Hobbs, New Mexico 88240. A copy of said Lease Agreement is attached hereto and incorporated herein by reference.

PASSED, ADOPTED AND APPROVED this 15th day of March, 2021.



SAM D. COBB, Mayor

ATTEST:



JAN FLETCHER, City Clerk





**CITY OF HOBBS
REAL ESTATE AND PROPERTY LEASE**

THIS LEASE is made the 15th day of March, 2021, by and between the City of Hobbs, New Mexico, a municipal corporation located in Lea County, New Mexico (hereinafter referred to as “Lessor”) and the New Mexico Department of Public Safety, an agency or instrumentality of the State of New Mexico pursuant to GSD Rule 1 NMAC 5.21 and amendments thereto, with a principle place of business 4491 Cerrillos Rd., Santa Fe, New Mexico (hereinafter referred to as “Lessee”).

1. Lease Property.

In consideration of the terms and conditions in this Lease, Lessor leases to Lessee, and Lessee leases from Lessor, those premises with appurtenances, situated in Hobbs, County of Lea, New Mexico, described as:

1.80 acres in Section 1, Township 18S, Range 37E, N.M.P.M., City of Hobbs, Lea County, New Mexico

and commonly known as: 5100 Jack Gomez Boulevard, Hobbs, New Mexico 88240

The property described above shall hereinafter be referred to as the “Lease Property,” which shall include all improvements, furnishings, fixtures, buildings, parking lots, and access points. The acreage of the Lease Property is: appx. 1.80. The square footage of all building space of the Lease Property is: 2,532 SF. The Lease Property contains 1 designated parking lot(s).

2. Lease Term.

The initial term of this Lease is for: Five (5) years. The initial term of this Lease shall commence on May 1, 2021, and shall end on April 30, 2026. In partial consideration for rent paid under this Lease, Lessor does grant Lessee, its successors and assignees the first option to renew this Lease. The renewal shall be for a term of five (5) years and shall be subject to the same terms and conditions set forth in this Lease for the initial term, except as may be provided otherwise in this Lease with regard to appraisal and rent. Lessee may exercise this option by giving Lessor written notice at least thirty days prior to the expiration of the initial term.

3. No Holding Over.

Lessee shall not hold over or maintain a continued use or occupancy of the Lease Property. At the expiration of the lease term and any subsequent renewals, or upon termination, Lessee shall surrender the Lease Property in accordance with Paragraph 12 herein.

4. Rent.

In consideration of this Lease, Lessee shall pay rent in the following manner:

Year	Date Beginning	Annual Amount	Monthly Amount	
1	05/01/2021	\$ 32,916.00	\$ 2,743.00	Original term
2	05/01/2022	\$ 33,574.32	\$ 2,797.86	Original term
3	05/01/2023	\$ 34,245.81	\$ 2,853.82	Original term
4	05/01/2024	\$ 34,930.73	\$ 2,910.89	Original term
5	05/01/2025	\$ 35,629.34	\$ 2,969.11	Original term
6	05/01/2026	\$ TBD	\$ TBD	First Renewal
7	05/01/2027	\$ TBD	\$ TBD	First Renewal
8	05/01/2028	\$ TBD	\$ TBD	First Renewal
9	05/01/2029	\$ TBD	\$ TBD	First Renewal
10	05/01/2030	\$ TBD	\$ TBD	First Renewal

The total rent for the initial year is: \$32,916.00. Rental price shall increase two percent (2%) annually, which shall apply to any renewal term contemplated under this Lease. The Lessee has the sole responsibility for paying rent. Lessee shall not be penalized for prepaying the entire total rent for the initial term at the beginning of the lease term, nor shall Lessee be penalized for prepaying an annual amount for any given year. Lessor reserves the right to have the Lease Property appraised at the conclusion of the initial term at Lessor's expense. Thereafter, Lessor may, in its discretion, adjust the rent according to the appraisal value following the new appraisal. Should the rental price be adjusted after the initial term, the Parties will execute an addendum to this Lease and attach the same hereto. Nothing contained in the provision obligates, in any way, Lessee to exercise its first option to renew. Should Lessee refuse to exercise the option to renew, Lessee will surrender property pursuant to Paragraph 12 herein. Lessor, in its sole discretion, may forego the right to have the property appraised at the conclusion of the initial term. Should Lessor forego the right to have the property appraised at the conclusion of the initial term, the total rental price for the first year of the renewal term would be \$36,341.93. The rental price would continue to increase two percent (2%) annually for each year thereafter.

5. Use of Lease Property.

Lessee shall use the Lease Property only as the office for the New Mexico State Police.

Lessee agrees that Lessor has conditioned the favorable terms of this Lease on Lessee's continued use of the Lease Property as outlined above. Should Lessee cease utilizing the Lease Property for the purpose above, Lessor reserves the right to seek all appropriate legal action including, but not limited to, action to terminate the Lease. Lessor agrees that the Lease Property is suitable for the purpose above, or has revealed to Lessee any reasons Lessor knows of or reasonably should know of why the premises might not be suitable for such purpose(s).

6. Conditions of Lease Property.

Lessor warrants that the premises are in good and safe conditions, structurally sound and of safe design and that they comply with all applicable building codes, ordinances, rules and regulations, except as noted:

[note any deficiencies here]

All noted conditions shall be rectified prior to the inception of this Lease or within sixty (60) days thereafter unless waived in writing by Lessee. In the event that a noted condition is waived, Lessor shall have no liability associated in any way with the presence of noted condition.

Further, Lessee has been given the opportunity to inspect the premises, or has voluntarily waived the opportunity to inspect the premises, and has accepted the premises as in good and safe condition and otherwise fit for use to achieve their stated purpose.

7. Accessibility for the Disabled.

Lessee warrants that the premises shall meet standards consistent with the Americans with Disabilities Act (ADA) during all times of business operations, and shall at a minimum meet the same standards within sixty (60) calendar days of the execution of this Lease. The Lessee also warrants that the premises will be maintained at all times in compliance with these standards.

8. Delivery of Possession.

Lessor warrants that the premises will be vacant and will put Lessee in possession on the first day of the initial term or any subsequent term.

9. Damage to Lease Property.

If at the inception of this Lease or at any time thereafter (including any renewal) all or any part of the Lease Property shall be damaged or destroyed through any cause attributed in any way to Lessee, other than a weather event or act of God, Lessee shall be responsible for all repairs and costs associated with the repair of the same. In making any repairs, Lessee shall first notify Lessor of the damage and provide a timeline for repairs. Lessor shall cooperate with Lessee in allowing all repairs to be made in a timely fashion. Lessee shall as soon as practical, inform Lessor of any and all damage attributed to a weather event or act of God and Lessor shall be responsible for all repairs and costs associated with the repair of the same.

10. Alterations.

Lessee shall obtain Lessor's written permission before making any alterations or improvements of a permanent nature to any portion of the Lease Property.

11. Ownership of Improvements.

All alterations and improvements made to or placed in the Lease Property by Lessee are and shall remain the Lessee's property except as the parties mutually agree otherwise in writing, but only if such alterations and improvements are temporary in nature and can be removed without undue damage to the Lease Property and are, in fact, removed by Lessee prior to termination of this Lease or any renewal thereof. Alterations and improvements of a permanent nature which cannot be removed without undue damage to the Lease Property shall become Lessor's property except as the parties mutually agree otherwise in writing. For purposes of this section, permanent alterations and improvements include, but are not limited to, any buildings, fences, additions, fixtures, or other structures of any kind. Any improvements present in the Lease Property at the inception of the Lease shall remain on the Lease Property for the duration of the lease term.

12. Condition of Lease Property Upon Surrender.

At the termination of this Lease, Lessee shall surrender the Lease Property in the condition in which it was at the inception of this Lease, excepting: deterioration caused through reasonable use and ordinary wear and tear; and alterations, improvements or conditions made with Lessor's written approval.

13. Payment of Assessments, etc.

Lessee shall pay for any discretionary alterations and improvements on the Lease Property that Lessee requires. Lessee shall not pledge, in any manner, the Lease Property or any of the structures or fixtures thereon, as collateral or otherwise allow any liens or mortgages to attach to any portion of the Lease Property whatsoever.

14. Utilities, Janitorial Services and Supplies.

Lessee shall pay all utilities associated with the Lease Property including but not limited to: water, sewer, refuse disposal, gas, electricity, telephone services, internet services, and all other utilities whatsoever. Additionally, Lessee shall ensure that all premises and buildings are kept clean and sanitary and shall pay for any services necessary to meet this obligation.

15. Right of Entry.

Lessor or its agent has a right to enter upon the Lease Property to inspect, to make repairs and for other reasonable purposes. Lessor shall provide Lessee at least 48-hours advanced notice prior to entering upon the Lease Property. Lessor shall obtain acknowledgment from Lessee, which shall not unreasonably be withheld, prior to entering upon the Lease Property. In an emergency, such as a fire, Lessor or its agent may enter the premises without securing Lessee's prior permission, but shall give Lessee notice of entry as soon thereafter as practicable.

16. Duty to Maintain Premises.

Throughout the initial term and renewal term, if applicable, it shall be Lessee's obligation, without cost to Lessor, to maintain the Lease Property. Lessee shall at all times keep the Lease Property neat, orderly, sanitary, and presentable. Lessee shall cause to be removed at Lessee's own expense from the Lease Property all waste, garbage, and rubbish, collectively referred to herein as refuse, and agrees not to deposit same on any part of the surrounding property. Lessor shall be entitled to remove Lessee's refuse from the Lease Property and charge Lessee a reasonable fee if Lessee fails to remove such refuse within one (1) day after receiving written notice from Lessor of improper storage or disposal.

Lessee shall perform, at its sole expense, ordinary preventative maintenance and repair of the Lease Property. In addition, Lessee shall maintain, repair, and, when necessary, replace all personal property, trade fixtures, equipment, and other Lessee improvements placed or installed on the Lease Property by Lessee.

Lessor shall maintain and repair at its sole cost and expense the building systems including roof, structural components, doors, HVAC systems, electrical systems, plumbing and sewage systems, and landscaping at the Lease Property, provided that Lessee shall be responsible for repairing any damage to the building systems caused by Lessee's operations and activities at the Lease Property.

17. Right to Assign or Sublease.

Lessee may assign or sublease the Lease Property only upon express written consent by Lessor, which shall not be unreasonably withheld, on the condition that any assignee or sub-lessee utilize the Lease Property for the purpose set forth herein.

18. Duty to Insure and Indemnity.

Lessor and Lessee, as New Mexico governmental entities, are globally self-insured. During the initial term and any renewal period, if applicable, Lessor and Lessee agree as follows:

- a. Lessor and Lessee shall each provide coverage for their own liability and the liability of their own "public employees," as defined in the New Mexico Tort Claims Act, and for their own personal property and leasehold improvements and betterments, as required by New Mexico law.
- b. Lessor shall maintain in force a policy or policies of insurance providing fire, lightning and extended coverage, or "all risk" coverage, for at least 80% of the actual cash value of the property.
- c. Lessee shall be solely responsible for obtaining insurance coverage for losses of Tenant-owned property. Lessor shall not be required to provide such insurance coverage or be responsible for payment of the Lessee's cost for such insurance.

19. Right to Terminate upon Breach of Condition of Agreement.

Either party may terminate this Lease upon the other party’s substantial breach of any term or condition contained in this Lease, provided that the breaching party shall be given thirty (30) calendar days from the receipt of written notice of a substantial breach to cure the breach or to begin and proceed, with due diligence, to cure a breach that cannot be cured within thirty (30) days. In the event of a substantial breach, the non-breaching party shall give the breaching party written notice that describes the nature of the breach and notifies the breaching party that, unless the breach is cured within the time limits contained herein, the Lease shall terminate without further notice at the end of the cure period. Upon termination of the Lease, the Lessee shall surrender the Lease Property to the Lessor pursuant to Paragraph 12 herein and shall be obligated to pay rent only to the date of surrender.

20. Lease Binding on Heirs and Assigns.

This Lease is binding upon the heirs, executors, administrators, personal representatives, assignees and successors-in-interest of the parties.

21. Amendments to be in Writing.

This Lease shall not be altered or amended except by instrument in writing executed by both the Lessor and Lessee.

22. Address for Notices, Payment of Rent, etc.

Notices required under this Lease and rental payments shall be made at the following address, except as changed by written notice to the opposite party:

To the LESSOR:	City of Hobbs 200 E. Broadway Hobbs, NM 88240 (575) 397-9239 (575) 397-9450 sraulston@hobbsnm.gov	To the LESSEE:	NMDPS PO Box 1628 Santa Fe, NM 87504 (505) 827-3347 Jessica.Lucero@state.nm.us
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Notices Only (Lessee): General Services Department, Facilities Management Division
Attn: Asset Management Bureau, Leasing
P.O. Box 6850
Santa Fe, NM 87502
Telephone number: (505) 827-2141

23. Merger of Prior Agreement.

This Lease incorporates all of the conditions, agreements and understandings between the parties concerning the subject matter of this Lease, and all such conditions, agreements and understandings have been merged into this written Lease. No prior condition, agreement or

understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Lease.

24. Certificates and Documents Incorporated.

All certificates and documentation required by the provisions of this Lease shall be attached to the Lease at the time of execution, and are hereby incorporated in this written Lease to the extent they are consistent with its terms and conditions.

25. Notice.

The Procurement Code (NMSA 1978, §§ 13-1-28 through 13-1-199) imposes civil and misdemeanor criminal penalties for its violation. Additionally, the Hobbs Municipal Code Chapter 3 shall be adhered to at all times in negotiating and contracting by the City of Hobbs. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

26. Duty to Comply with NMSA 1978, § 3-54-1.

Pursuant to NMSA 1978, § 3-54-1, a municipality may lease any municipal facility or real property of any value normally leased in the regular operations of such facility or real property, and such lease shall not be subject to referendum. However, a municipality may lease any real property having an appraised value in excess of twenty-five thousand dollars (\$25,000) by public or private lease, subject to referendum provisions. Any lease of municipal facilities or real property in excess of twenty-five thousand dollars (\$25,000) shall be by ordinance of the municipality. As a result, the parties understand that the City of Hobbs City Commission reserves the right to reject this Lease, if the appraised value is in excess of twenty-five thousand dollars (\$25,000), by a majority vote so rejecting. Parties shall have no right to claim “detrimental reliance” or any other contractual theories as a result of a Commission vote rejecting this Lease, or alternatively, a referendum petition by the voters of Hobbs, New Mexico, which is aimed at overturning any Commission vote in favor of this Lease.

27. Miscellaneous.

This Lease shall be interpreted pursuant to the laws of the State of New Mexico. Venue and Jurisdiction shall lie exclusively in the Fifth Judicial District Court, Lea County, New Mexico.

If any provision of this Lease shall be deemed by a court of competent jurisdiction as illegal, unenforceable, or unconstitutional, the remainder of the Lease shall remain valid and enforceable as written.

By entering into this Lease, neither party in any way waives or foregoes any protections afforded under the New Mexico Tort Claims Act (NMSA 1978, § 41-4-1, et seq.) or any other theories of law that afford immunity to government agencies and their officers and employees.

Each party is responsible for liability associated with the actions or omissions of it or its own employees, but not for liability associated with the actions or omissions of the other party or that other party's employees, including violations of rights and privileges guaranteed under the Laws and Constitution of the United States and the State of New Mexico.

[All Necessary Signatures on the Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year first above written.

ATTEST:

THE CITY OF HOBBS, NEW MEXICO

By: 
SAM D. COBB, Mayor

By: 
JAN FLETCHER, City Clerk

By: 
TOBY SPEARS, Finance Director



ATTEST:

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

By: _____
TIM Q. JOHNSON, INTERIM SECRETARY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


EFREN A. CORTEZ, City Attorney

ELIZABETH TRICKEY, DPS General Counsel