#2012-0219-CSD/PL

LEASE AGREEMENT
BETWEEN
SANTA FE COUNTY
AND
PRESBYTERIAN MEDICAL SERVICES

The parties to this agreement (hereinafter "Lease") between Santa Fe County (hereinafter "County"), a political subdivision of the State of New Mexico, as Lessor and Presbyterian Medical Services (hereinafter "PMS"), a New Mexico nonprofit corporation, as Lessee, agree as follows:

1. Recitals.

A. The County owns an approximately 1,878 square foot building, adjacent parking and playground area at #205A, County Road 98 (Juan Median Rd.) (hereinafter the "Property"), which is located on real property described on Exhibit A, attached hereto.

B. The County desires to lease said Property to PMS, which has demonstrated a history of service to sick and indigent persons in Santa Fe County, to provide Head Start services to children in Santa Fe County.

2. Term.

The term of this Lease shall be for one year commencing on January 1, 2012, and terminating on December 31, 2012, subject to earlier termination as provided herein.

3. Rent.

PMS shall pay the County rent of $500.00 per month, payable on the first day of each month.

4. Use of Property.

A. PMS shall use the Property to provide a Head Start program to sick and indigent children in Santa Fe County. The County is not a participant, or in any way involved in, the operation of PMS or the services provided by PMS.

B. The Property will be used during the months of January through December for approximately eight hours per day.

C. PMS shall not create or allow a nuisance to exist on the Property.

D. PMS shall use the Property at all times in compliance with all applicable federal, state and local laws and regulations and only after all necessary permits or licenses have been obtained from the appropriate entities.

5. Utilities.

PMS shall pay all utilities when due, including but not limited to water, sewer, refuse, electricity, gas, propane, telephone and security monitoring, whether or not such payments are made directly to the utility companies or to the County. In addition, PMS shall pay for all of its janitorial services and needs.

6. Insurance.

PMS shall procure and maintain in force a policy of general commercial liability insurance during the term of this Lease.

A. All insurance documents must include a provision for 30-day written notification to the Director of the Santa Fe County Community Services Department with copies to the Santa Fe County Manager at P.O. Box 276, Santa Fe, NM 87504-0276, in the event that any required policy has been materially changed or cancelled.

B. The County shall be added as an additional insured (Form B-CG20101185 or CG2010398) and will be written on an occurrence form and shall provide limits as follows:

1.	Commercial General Liability	$1,050,000 combined single limit per occurrence
2.	Damage to Rented Property	$ 750,000

C. PMS shall furnish one copy of the required Certificates of Insurance that shall specifically set forth evidence of all coverage required by this Lease upon execution of this agreement. PMS shall also immediately furnish to the County copies of any endorsements that are subsequently issued amending coverage or limits.

D. During the term of this Lease, if the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act, the County may require PMS to increase the limits of such insurance by notice to PMS. Evidence of a policy increasing the limits and complying with all requirements of this Paragraph 6 shall be provided by PMS to the County within 30 days of such notification.

7. Indemnification.

PMS agrees to promptly defend, indemnify and hold harmless the County, its officers, employees, agents and elected officials against liability claims including, without limitation, professional negligence claims, attorneys' fees, damages, losses or expenses arising out of bodily injury to persons, including death, or damage to property caused by, or resulting from acts or omissions arising out of, or relating to, the obligations and conditions of this Lease or out of PMS's use, activities on or occupation of the Property, or for any services provided or a failure to perform service by PMS, its directors, agents or employees. PMS shall not be required to indemnify the County for any negligent or intentional acts or omissions of the County or any of its officials, employees or agents.

8. Repair and Maintenance.

A. The County will maintain the exterior structure, roof, mechanical and electrical systems, HVAC systems, foundation, and plumbing of the building only, subject to the County having sufficient appropriations, which decision may be made in the County's sole discretion. Should the County be unable to provide the described maintenance, PMS shall provide the necessary maintenance at its own cost and expense.

B. Except to the extent of the County is obligated to do so pursuant to the preceding paragraph, PMS shall, at its sole cost and expense, maintain the exterior and interior of the Property and provide day-to-day maintenance thereon.

C. PMS shall, at its sole cost and expense, repair or replace any damages caused by PMS, its employees or invitees to the Property (even though the damage is to a part of the Property that the County is otherwise required to maintain) promptly upon approval for such repairs from the County. All such repairs and replacements shall be at least equal in quality of materials and workmanship to the original work. Approval for repair and replacements shall be obtained from the Director of Operations for the Projects and Facilities Management Department for the County.

9. Alterations and Improvements.

PMS shall not make any alterations, improvements, additions or changes to the Property, other than those required for the day-to-day maintenance of the Property, without the prior written consent of the County.

10. Mechanic's Liens.

PMS agrees that at least five business days prior to any construction work done by PMS or on PMS's behalf by any person, contractor, firm or corporation, that PMS will post and record, or cause to be posted and recorded, as provided by law, a notice of non-responsibility for any work, labor or materials used or expended or to be used or expended on the Property. PMS agrees to remove any mechanic's liens placed on the Property, as a result of work it has procured, within five business days of notice of the lien and indemnify the County for same. Any improvements made by PMS in the nature of fixtures shall become the property of the County at the termination of the Lease.

11. Taxes.

PMS shall pay any and all taxes and levies assessed upon any personal property, fixtures and improvements belonging to PMS and located upon the Property, and all leasehold and possessory interest taxes with respect to the Property levied or assessed by any proper taxing authority.

12. Signs and Personal Property.

PMS may place signs on the Property only with advance approval of the County, provided however that all such signs conform to applicable law. All personal property, *e.g.* signs and improvements of PMS, its employees, agents, customers and invitees, kept on the Property shall be in furtherance of the use of the Property as permitted under this Lease and at the sole risk of PMS; the County shall not be liable for any damage thereto.

13. Non-Discrimination.

PMS, with respect to employment of staff and to those persons using the Property or receiving services from PMS, shall not discriminate unlawfully with respect to race, sex, national origin, age, religion, sexual orientation or any other class protected from discrimination by applicable local, state or federal laws.

14. Hazardous Materials.

A. PMS will neither cause, nor permit, any Hazardous Material, as defined below, to be brought upon, kept or used in or about the Property.

B. In the event of PMS's breach of the provisions of this Paragraph 14, PMS accepts and affirms full liability and responsibility for all costs and expenses related thereto, and indemnifies the County from and against any liability or damages related to:

1. any investigation of the Property for the presence of Hazardous Materials alleged to have been brought, used or disposed of on the Property by PMS; and

2. the Hazardous Material clean-up, removal or restoration of the Property required by a federal, state or local governmental agency.

C. PMS's responsibilities and indemnification under this Lease will survive the expiration or termination of this Lease.

D. As used herein, the term "Hazardous Material" means a substance the release of which on the Property would necessitate an environmental response action under federal, state, county or municipal law, whether now in effect or enacted in the future, and includes without limitation the following: asbestos in any form; formaldehyde; transformers or other equipment that contains fluid containing polychlorinated biphenyls; any petroleum product in non-regulated bulk storage containers; radon; or any other chemical material or substance that is defined or classified as hazardous or toxic in law or the exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority having jurisdiction.

15. Assignment, Subletting and Mortgage.

A. PMS shall not assign this Lease or sublet the whole or any part of the Property.

B. PMS shall not transfer or convey, either voluntarily or involuntarily, this Lease, or any interest in this Lease; this Lease may not be hypothecated or mortgaged by PMS, and any attempted assignment, subletting, hypothecation or mortgaging of this Lease shall be void and shall be of no force or effect and shall confer no rights upon any assignee, sub lessee or mortgage pledgee.

C. In the event PMS becomes bankrupt or insolvent, or should a trustee or receiver be appointed to administer PMS's business or affairs, neither this Lease nor any interest in this Lease shall become an identified asset of PMS's bankruptcy or other estate, trustee or receiver, and in the event of the establishment of such estate or the appointment of any such guardian, trustee, or receiver, this Lease shall immediately terminate.

16. County's Access to Property.

The County shall have free access to the Property at all reasonable times for the purpose of examining the Property, to determine whether PMS is performing under this Lease and to post such reasonable notices as the County may desire to protect the rights of the County. The County's access will be consistent with PMS's operations.

17. Breach.

A. In the event of a breach by either party, the non-breaching party shall notify the breaching party, in writing, of the breach. If the breach is not cured within thirty days, or an extension granted thereto, this Lease shall be terminated by the non-breaching party.

B. In the event of a default and termination, the County shall have the following remedies:

1. The County may declare this Lease terminated and enter upon the Property or any part thereof, and repossess the Property and remove all improvements.

2. In such event, the County shall retain for any rent, damages or other sums that may be due hereunder any property belonging to PMS and located on the Property, and all PMS's rights to such property shall be forfeited.

3. The County may re-enter the Property and may rent same upon such terms as are suitable to the County, all without releasing PMS from liability hereunder.

4. In such event, any monies collected by such leasing shall be applied first to the expense of restoring and placing the Property in a rentable condition and next to the payment of the rent or any sum due the County hereunder. PMS shall remain liable for any deficiency.

18. Termination.

A. This Lease may be terminated upon written agreement by both parties to this Lease.

B. This Lease may be unilaterally terminated, upon written request by PMS upon a showing of financial hardship rendering PMS unable to comply with the agreed upon Lease terms.

C. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

19. Surrender Upon Expiration or Termination.

At the expiration of this Lease or upon termination, PMS shall surrender the Property, including all existing improvements, to the County in as good a condition as it was in at the beginning of the term, reasonable use and wear excepted.

20. Notices.

All notices and other communications required to be given as provided in this Lease will be in writing, and unless otherwise specifically provided in this Lease, will be deemed to have been given if delivered in person, or sent by a nationally recognized overnight courier service, or mailed by certified or registered mail, postage prepaid, and addressed to the County or PMS at the following addresses:

Notice to the County:

Stephen Ross, County Attorney &
Mark A. Hogan, Division Director of Property & Facilities
Santa Fe County Attorney's Office
102 Grant Avenue
Post Office Box 276
Santa Fe, NM 87504-0276

Notice to PMS:

Presbyterian Medical Services
1422 Paseo de Peralta
Santa Fe, New Mexico 87509
Attn: Michelle Quintana, Children's Services Manager &
Attn: Stephen C. Hansen, President and CEO of PMS
505.954.4601, Michelle Quintana
505.9862-5565, Stephen Hansen

21. Waiver.

No waiver or any default as provided in this Lease or delay or omission in exercising any right or power of the County or PMS will be considered a waiver of any other right or power as provided in this Lease. The exercise of or failure to exercise any one of the rights or remedies of the County or PMS as provided in this Lease will not be deemed to be a waiver of any other right or remedy provided in this Lease.

22. Entire Agreement.

This Lease constitutes the entire agreement of the County and PMS relating to the subject matter hereof and supersedes all previous agreements, written or oral, between the County and PMS on such subject.

23. Partial Invalidity.

If any term of this Lease, or the application of the term to any person or circumstance, is to any extent invalid or unenforceable, the remainder of this Lease will not be affected, and each term of the Lease will be valid and be enforced to the fullest extent permitted by law.

24. Sublease – Mortgages.

PMS may not grant a sublease, collateral assignment, deed of trust, mortgage or other security interest in its interest in this Lease, the Property or any improvements to any person or entity.

25. Fixtures.

Except as otherwise provided herein, PMS shall have the right to install such fixtures and equipment as may be necessary for the conduct of its business. Upon termination of this Lease, all fixtures shall remain affixed to the Property and shall become the property of the County, except for PMS's equipment purchased by it that can be removed without damage to the Property.

26. Damage or Destruction of Property.

A. Repairs for all items referred to in the Lease as being the responsibility of the County, arising from either construction design or natural causes, shall be commenced by the County within 30 days of notification by PMS that such repairs are necessary.

B. Repairs are subject to the County having sufficient appropriations. The determination as to whether such appropriations are available is in the County's sole discretion.

C. In the event repair or reconstruction is deemed impractical or unreasonable by the County, this Lease shall terminate with no additional obligation on the part of the County.

27. Sovereign Immunity.

No provision of this Lease modifies or waives the sovereign immunity or limitation of liability enjoyed by the County or its public employees at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

28. Miscellaneous.

This Lease is governed by and will be construed according to the laws of the State of New Mexico and binds the successors, transferees and assigns of the parties. This Lease may be amended only in writing signed by both parties.

29. Compliance with Laws.

PMS agree to comply with all laws, ordinances, rules and regulations that may pertain or apply to the Property and the use thereof.

BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO

Virginia Vigil, BCC Chair

PRESBYTERIAN MEDICAL SERVICES

Date: 12/14/11

~~Stephen C. Hansen~~, President & CEO, PMS
Steven C. Hansen

Date: 12·8·11

Attest:

Valerie Espinoza
County Clerk

Approved as to form:

Stephen C. Ross
County Attorney