

**LEASE AGREEMENT  
BETWEEN  
SANTA FE COUNTY  
AND  
PRESBYTERIAN MEDICAL SERVICES**

The parties to this Lease 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, who enter into this Lease for the purpose of PMS operating a Head Start program for children, 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 (aka, 205A Juan Median Rd.), Santa Fe County. (hereinafter the "Property"), which is located on real property described in Exhibit A, attached hereto.

B. The County desires to lease said Property to PMS, so that it may continue to provide Head Start services to sick and indigent children in Santa Fe County.

**2. Term.**

The term of this Lease shall be for one year commencing on January 1, 2013, and terminating on December 31, 2013, subject to earlier termination as provided herein. PMS and the County agree to consider further renewal of the Lease upon the end of this Term, which constitutes the second year of a lease agreement between the parties. Any renewal of this Lease for an additional period of time shall require a new lease.

PMS accepts the Property in its present state and agrees that it is in good condition, without any representation or warranty by the County as to the condition of the Property or as to the use, which may be made thereof.

**3. Rent.**

PMS shall pay the County rent of \$500.00 per month, payable on the first day of each month. PMS shall have the right to pay the full balance of the rent at any time during the Term of the Lease. All rent payments shall be made payable to "Santa Fe County" and be mailed

or delivered to: Mark Hogan, Director, Projects, Facilities and Open Space Division, PO Box 276, Santa Fe, New Mexico 87504-0276.

**4. Use of Property.**

A. PMS shall use the Property to provide a Head Start program for sick and indigent children in Santa Fe County. The County is not, however, a participant in nor is it in any way directly or indirectly involved in the operation by PMS of the referenced Head Start program. PMS shall be entitled to the exclusive use of the Property for so long as this Lease is in effect and may, accordingly, secure access to the Property.

B. The Property will be used during the months stated in the term for approximately eight (8) hours each 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 be responsible for, and during the Term of the Lease 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 own janitorial services and related needs.

**6. Insurance.**

PMS shall procure, carry and maintain an insurance policy of general commercial liability insurance on the Property during the term of this lease agreement, subject to the following:

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 PO Box 276, Santa Fe, NM 87504-0276, in the event that any required policy is materially changed or cancelled.

B. The County shall be added as an additional insured and the policy shall provide liability coverage of at least the following limits:

- a) Commercial General Liability- \$1,050,00 combined single limit per occurrence; and
- b) Damage to rented Property- \$750,000

C. PMS shall furnish to the County one copy of the required Certificates of Insurance that shall specifically set forth evidence of all coverage required by this Lease agreement upon signing by the parties. PMA shall upon receipt also promptly furnish to the County copies of any endorsements that are subsequently issued by PMS's insurer amending any coverage or limits.

D. During the term of this Lease Agreement, 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 PMS's 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 the County's 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 due to insufficient appropriations, PMS shall provide the necessary maintenance at its own cost and expense.

B. Except to the extent that the County is obligated to do so pursuant to the preceding paragraph 8A, PMS shall, at its sole cost and expense, maintain the exterior and interior of the Property and provide day-to-day maintenance and custodial services 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 Projects, Facilities and Open Space Division for the County.

**9. Alterations and Improvements.**

A. 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.

B. PMS represents that it inspected and examined the Property and accepts it “as is” in its present condition and agrees that the County shall not be required to make any improvements or repairs whatsoever in or to the Property or any part thereof. PMS shall keep and maintain said Property in safe and in good order and condition at all times during the Term hereof.

C. PMS shall not be obligated to repair damage caused by the negligence of the County, its employees or invitees.

**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 any mechanic’s 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 governmental taxing authority. PMS shall be responsible for payment of all other taxes and levies assessed upon

said Property, including, but not limited, to real property taxes and special assessments levied or assessed by any governmental taxing authority.

**12. Signs and Personal Property.**

PMS may place signs on the Property but only with the advance approval of the County, provided however that all such signs conform to applicable laws and any ordinances of the County. 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 full or part-time staff and to those persons using the Property or receiving services from PMS, shall not discriminate unlawfully on the basis of 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, stored or used on 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, stored, 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 related to Hazardous Material and indemnification under this Lease shall 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 substances: 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, pledged or mortgaged by PMS, and any attempted assignment, subletting, hypothecation, pledging 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 inspecting the Property, for the purpose of determining whether PMS is performing under this Lease, for the purpose of posting such reasonable notices as the County may desire to protect the rights of the County, and for any other lawful purposes. The County's access will be consistent with PMS's operations.

**17. Breach.**

A. In the event of a breach by either party of the terms of this Lease, 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 that could result in 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 successive 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. Default.**

In the event that PMS shall be in default of any payment of any rent pursuant to this Lease, then in that event, the County may terminate and end this Lease, forthwith, consistent with Paragraph 19 below.

**19. 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 up to the date of termination.

D. Termination for Convenience of the County. The County may, in its discretion, terminate this Lease at any time for any reason by giving PMS written notice of termination. The notice shall specify the effective date of termination, which shall not be less than thirty (30) days from PMS's receipt of the notice. PMS shall not be liable for any rent after the effective date of termination.

E. Upon the end of the Term of this Lease or any renewal thereof pursuant to paragraph 2 "Term," PMS shall quit and surrender possession of said Property quietly and peaceably.

**20. 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, and at its sole cost and expense, shall make

all repairs reasonably necessary to return the Property in as good a condition as it was on the effective date of this Lease, reasonable wear and tear excepted.

**21. 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 C. Ross, County Attorney  
Santa Fe County Attorney's Office  
102 Grant Avenue  
Post Office Box 276  
Santa Fe, NM 87504-0276  
Ph: (505) 986-6279  
Fx: (505) 986-6362

**With a copy to:**

Mark Hogan, Director  
Projects, Facilities and Open Space Division  
102 Grant Avenue, Post Office Box 276  
Santa Fe, NM 87504-0276  
Ph: (505) 992-9852  
Fx: (505) 992-9869

**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  
Ph: (505) 954-4601, Michelle Quintana  
Ph: (505) 986-5565, Stephen Hansen  
Fx: (505) 986-8299

**22. 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 shall not be deemed to be a waiver of any other right or remedy provided in this Lease.

**23. 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.

**24. Partial Invalidity.**

If any term of this Lease, or the application of the term to any person or circumstance, is determined to be invalid or unenforceable by a court of competent jurisdiction, 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.

**25. Sublease – Mortgages.**

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

**26. 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.

**27. 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.

**28. Sovereign Immunity.**

No provision of this Lease shall modify or waive the sovereign immunity or limitation of liability applicable to the County and its public employees at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

**29. Miscellaneous.**

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

**30. Compliance with Laws.**

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

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease and have set their hands and seals on the dates indicated.

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY, NEW MEXICO**

**PRESBYTERIAN MEDICAL  
SERVICES**

*Liz Stefanics*  
Liz Stefanics,  
Chairperson

*Stephen C. Hansen*  
Stephen C. Hansen,  
President & CEO, PMS

Date: 11/27/2012

Date: 10-30-12

Attest:  
*Valerie Espinoza* *by vt*  
Valerie Espinoza,  
County Clerk



Approved as to form:

*William K. Brown*  
for - Stephen C. Ross  
County Attorney *10/10/12*

EXHIBIT "A"

A parcel of land located in the Northeast Quarter of Section 12, Township 20 North, Range 09 East, N.M.P.M., Santa Fe County, New Mexico, being a portion of Government Lot 4 as conveyed to Santa Fe County, New Mexico by the United States of America in Land Patent number 30-73-0016, dated January 23, 1973; more particularly described as follows:

A parcel of land lying in the Southwest Quarter of the Northeast Quarter of the Northeast Quarter of Section 12, Township 20 North, Range 09 East, N.M.P.M., Santa Fe County, New Mexico. Said parcel lying west of and adjacent to the westerly right-of-way line of County Road 98 (also known as Juan Medina Road), and being 1.9 acres, more or less in area. The E-911 address of said parcel being 205A Juan Medina Road.

SFC C1E9E1C0C0E1E1E1/31/2011