

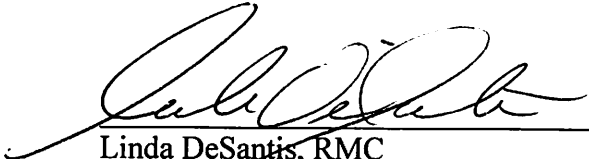
2010 -153

**RESOLUTION OF THE MAYOR AND BOROUGH COUNCIL
OF THE BOROUGH OF MOUNT ARLINGTON, IN THE
COUNTY OF MORRIS, NEW JERSEY, AUTHORIZING
EXECUTION OF A 911 SERVICE AGREEMENT RENEWAL
BETWEEN SAINT CLARE'S HOSPITAL, INC.
AND THE BOROUGH OF MOUNT ARLINGTON**

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris, State of New Jersey, that the Mayor and Borough Clerk are authorized to execute a 911 Service Agreement Renewal between Saint Clare's Hospital, Inc. and the Borough of Mount Arlington.

This Resolution shall take effect immediately.

I hereby certify this to be an accurate and true resolution as approved by the Mayor and Borough Council at a Meeting held on December 14, 2010.


Linda DeSantis, RMC
Borough Clerk

SERVICE AGREEMENT

by and between

SAINT CLARE'S HOSPITAL

and

BOROUGH OF MT. ARLINGTON, NEW JERSEY

THIS SERVICE AGREEMENT ("Agreement") is made as of this 4th day of October, 2010 by and between **SAINT CLARE'S HOSPITAL**, a New Jersey not-for-profit corporation, located at 25 Pocono Road Denville, New Jersey 07834 ("Provider") and **BOROUGH OF MT. ARLINGTON**, a New Jersey municipality, having its principal place of business at 419 Howard Boulevard, Mt. Arlington, New Jersey 07856 (hereinafter referred to as "Client"). Client and Provider shall be hereinafter referred to collectively as "the Parties".

WITNESSETH:

WHEREAS, Provider is a not-for-profit hospital dedicated to providing quality health care services to the members of its community; and

WHEREAS, Provider provides emergency and non-emergency BLS response and medical transportation services ("Services"), in accordance with applicable laws, the rules and regulations of the New Jersey State Department of Health and Senior Services ("Department"), and the Medicare and Medicaid Programs; and

WHEREAS, Client has determined that the health and welfare of its residents would be best served by supplementing the services provided by the Mt. Arlington Rescue Squad, a volunteer association ("Squad"), through a contractual arrangement for Services; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties intending to be legally bound agree as follows:

1. **INDEPENDENT CONTRACTORS.** It is mutually understood and agreed that in the performance of the duties and obligations of the Parties to this Agreement, each Party hereto is a separate and independent contractor. Neither Party is the principal, agent or representative of the other; nor shall any employee of either Party be considered an employee of the other Party. Each Party shall be solely responsible for payment of withholding taxes, FICA and other such tax deductions on any earnings or payments made by that Party under this Agreement. Neither Party shall have, nor exercise any, control or direction over the methods by which the other Party shall perform its work and functions.

2. **OBLIGATIONS OF CLIENT.**

(a) Utilization of Services. Client appoints Provider as its primary provider of Services as required within the geographic boundaries of Mt. Arlington Borough during the Term of this Agreement.

(b) Dispatch Responsibility. Client shall maintain financial and operational dispatch responsibility. In the event Client ceases dispatch operations and contracts the dispatching service, Client shall retain financial responsibility for such dispatch.

(c) Vehicle/Equipment.

(i) Supplies – Client shall provide Client’s vehicle (the “911 Ambulance”) for use by Provider solely for Services rendered on behalf of Client hereunder. Client shall ensure that the 911 Ambulance is equipped with all basic life support equipment, a stretcher, stair chair, suction units, and any other hard equipment required by state or federal law to enable Provider to provide and bill for its Services hereunder. The 911 Ambulance shall have two-way radio and/or mobile telephone communication capability. The 911 Ambulance shall have seatbelts to secure passengers in the rear and front of the vehicle. Client shall provide a second vehicle (“Backup Vehicle”) to Provider to provide Services in the event that there is a simultaneous call at shift change and the day crew and relieving crew are both out on calls at the same time.

(ii) Maintenance - any major maintenance and repair work, including but not limited to, transmission or major engine repair, will be the operational and financial responsibility of Client. Client shall obtain approval from the appropriate Borough of Mt. Arlington authorities for all major repairs.

(iii) Fuel - Client will supply, at its cost, all fuel required for the 911 Ambulance from the Client-owned fuel pump.

(iv) Vehicle Standards – Upon turning over the 911 Ambulance to Hospital, Client shall ensure that the 911 Ambulance meets the requirements of all applicable federal, state and local laws, regulations, licensure standards and recognized industry guidelines.

(d) Mutual Aid. Client shall, pursuant to customary mutual aid agreements, arrange for back-up medical transportation service to be provided by a qualified medical transportation provider or voluntary agency in the event that Provider is unable to respond to a dispatch request for service. Provider agrees to reasonably cooperate with mutual aid agreements executed by Client with its neighboring communities.

(e) Other Supplies and Equipment. Client shall supply adequate living space and beds for Provider’s employees, to support a 24/7 presence within the Borough.

3. OBLIGATIONS OF PROVIDER.

(a) Hours of Service. Provider agrees to make its Services available to Client twenty-four (24) hours a day, seven (7) days per week. Provider’s 911 Crew (provided pursuant to Section 3(c)), will be on the road for any emergency dispatch within ninety (90) seconds of receiving the dispatch.

(b) Vehicle.

(i) Signage – At its cost, Provider will re-letter the 911 Ambulance with vinyl decals to reflect Saint Clare’s as Provider, adding “Proudly Serving Mt. Arlington Borough.”

(ii) Insurance – At its cost, Provider will insure the 911 Ambulance and the Backup Vehicle for liability, collision and comprehensive insurance under the same terms as Provider’s owned vehicles and in accordance with Exhibit A attached hereto, provided that such coverage for the Backup Vehicle shall apply only during such times as such Backup Vehicle is being operated by Provider’s agents or employees.

(iii) Use of Vehicle - Provider will not use the 911 Ambulance for any purpose other than providing Services to Client hereunder.

(iv) Medical Supplies – At its cost, Provider will provide all medical supplies necessary for the 911 Ambulance.

(v) Maintenance of Vehicle -

(1) At its cost, Provider will maintain the day-to-day general mechanics of the 911 Ambulance in good working order, which shall be defined as preventive maintenance, tires, brakes, lights, inspection, oil changes, cleaning, etc. Provider will report all non-general, major vehicle maintenance and repair needs promptly to Client who shall take the necessary actions pursuant to 2(c)(ii) hereof;

(2) At its cost, Provider will repair or replace any medical equipment broken or damaged through the negligence of Provider’s employees, excluding ordinary wear and tear;

(3) Provider shall ensure that the 911 Ambulance is in sound mechanical condition prior to operation for each dispatch; and

(c) Staff and Personnel.

(i) Provider shall provide two (2) personnel (“911 Crew”) at all times who are certified to the level of Emergency Medical Technician as the term is defined in the applicable laws and regulations (“EMT”), and who are familiar with the environment of the 911 Vehicle and qualified to operate the 911 Vehicle and equipment. Such 911 Crew may also be certified paramedics or nurses. Provider will take all reasonable steps to ensure that the 911 Crew is drug and alcohol free, is of good character, sensitive to needs of patients and their family members, and demonstrate professionalism in the conduct of their duties hereunder. Provider will maintain workers compensation insurance for the 911 Crew as required pursuant to applicable laws.

(ii) Provider shall provide Client a copy of all current EMT certifications of 911 Crew.

(d) Compliance.

(i) Provider agrees to render all Services in compliance with all applicable laws, regulations and licensure standards applicable to the Services provided hereunder.

(ii) Provider shall ensure that the 911 Ambulance and equipment are state inspection ready at all times in accordance with the standards of the New Jersey Office of Emergency Medical Services.

(e) Patient Choice. Provider shall transport patients to the hospital of their choice, within a reasonable distance, and in accordance with applicable Department and federal guidelines regarding the most appropriate medical facility.

(f) Squad Involvement. Provider will use its best efforts to work cooperatively with the Squad and members of the Mt. Arlington Police Department in rendering Services to patients. Notwithstanding the foregoing, the Parties agree that when Provider's 911 Crew appears on the scene, it shall assume management over the medical care of the patient. Provider and 911 Crew shall not have any liability for any services, or lack thereof, provided to the patient by the Squad, the Mt. Arlington Police Department or any other person prior to the 911 Crew's arrival on the scene and assumption of medical control and Client hereby indemnifies and holds harmless Provider with respect to same.

(g) Other Supplies and Equipment. Provider will maintain linen and furniture, except beds, in the living space provided by Client for the 911 Crew. The 911 Crew will assume the responsibility of keeping the crew quarters neat and clean.

4. OPERATIONAL STANDARDS.

(a) Location. When not in service, the 911 Ambulance and 911 Crew shall be stationed at the facilities designated by Client for its 911 Services.

(b) Quality Assurance Standards. Provider shall engage in continuous quality improvement efforts to help ensure a consistently high level of Services.

(c) Reporting Requirements. Provider shall furnish monthly utilization reports to Client. Such reports shall detail Services provided pursuant to this Agreement for the preceding month and shall be submitted to Client no later than the 15th day of the month after such Services were provided.

(d) The 911 Ambulance shall be operated by the 911 Crew in accordance with all applicable vehicle and traffic safety laws.

(e) Compliance With Laws.

(i) Each Party hereby warrants that all goods and/or services to be provided under this Agreement, whether directly or by approved sub-contractors of such Party, shall fully comply with all applicable federal, state and local statutes, laws, rules and regulations, and that it shall be deemed a material breach of this Agreement if a Party shall fail to observe this requirement. If such a breach is not cured in accordance with this Agreement, the non-

breaching Party may terminate this Agreement without penalty and without limiting any other rights and remedies set forth in this Agreement.

(ii) Specifically, but not by way of limitation, each Party hereby warrants that the good and/or services to be provided hereunder by such Party shall comply with all applicable laws, rules, regulations and accreditation standards and requirements of: Medicare or Medicaid or other federal or state health programs; The Joint Commission; the Health Insurance Portability and Accountability Act of 1996 and all regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information (collectively "Privacy and Security Regulations"), to the extent applicable, the National Committee for Quality Assurance; and updates to incorporate any changes to such; laws, rules, regulations, standards and requirements. Each Party further warrants that, to the extent that any such laws, rules, regulations, accreditation standards and requirements are not directly applicable to such Party but are directly applicable to the other Party, such Party shall provide goods and/or services under this Agreement so as to enable the other Party to meet its obligations under such rules, regulations and accreditation standards or requirements.

5. **NON-DISCRIMINATION.** Neither of the Parties shall differentiate or discriminate in the delivery of their goods or services hereunder to individuals because of race, color, national origin, ancestry, religion, sex, marital status, sexual preference, age, financial status, ability to pay for services, or medical condition and agree to render treatment and care to all persons in the same manner.

6. **EXCLUDED PROVIDER.** Each Party hereby represents and warrants that such Party is not and at no time has been excluded from participation in any federally funded health care or other federal or state program, including Medicare and Medicaid. Each Party hereby agrees to immediately notify the other Party of any threatened, proposed, or actual exclusion from any federally funded health care program, including Medicare and Medicaid. In the event that a Party is excluded from participation in any federally funded health care or other federal program during the term of this Agreement, or if at any time after the effective date of this Agreement it is determined that a Party is in breach of this Section 6, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate. Each Party shall indemnify and hold harmless the other Party against all actions, claims, demands and liabilities, and against all loss, damage, costs and expenses, including reasonable attorneys' fees, arising directly or indirectly out of any violation of this Section 6 by such Party, or due to the exclusion of such Party from a federally funded health care or other federal program, including Medicare or Medicaid, or out of an actual or alleged injury to a person or to property as a result of the negligent or intentional act or omission of such Party, or any of such Party's employees, subcontractors, or agents providing goods or services in connection with such Party's obligations under this Agreement, except to the extent any such loss, damage, costs and expenses were caused by the negligent or intentional act or omission of the other Party, or its officers, employees or agents.

7. **COMPLAINTS.** The Parties shall cooperate in responding to any complaints lodged against them. Responses to complaints shall be in writing and delivered within a time frame that is acceptable to both Parties, never exceeding fourteen (14) days for general issues and five (5) business days following any major accident or incident. The Parties, in responding,

shall list the nature of the complaint, their investigative findings and, when necessary, a plan of corrective action.

8. **INSURANCE AND CERTIFICATIONS.** Provider shall maintain the insurance coverage set forth on Exhibit A throughout the Term of this Agreement. Provider shall provide Client with a copy of its current Certificate of Insurance upon Client's request.

9. **COMPENSATION.**

(a) **Reimbursement for Non-Medicare Patients.** Provider shall bill patients who are not Medicare or Medicaid beneficiaries, and/or their insurance companies at the rate of \$550.00 per 911 transport minus Sixty Dollars (\$60) in consideration for Client's contribution of vehicle expenses (for a total of Four Hundred Ninety Dollars (\$490) per 911 transport) ("Medical Service Fee"), plus a fee of Eight Dollars (\$8.00) per loaded mile ("Transport Fee") (Medical Service Fee and Transport Fee shall be collectively referred to as the "Service Fee"). For purposes of calculating the Transport Fee, any partial mile traveled shall be rounded up to the nearest one-tenth of a mile in accordance with Medicare regulations.

(b) **Reimbursement for Medicare and Medicaid Patients** In the event the patient is a Medicare or Medicaid beneficiary, Provider shall bill Medicare and/or the patient the applicable Medicare or Medicaid fee for the Services provided ("Medicare/Medicaid Rate"). Provider shall track each 911 transport provided by Provider hereunder and shall provide such information to Client within fifteen (15) days of each calendar month along with a payment of Sixty Dollars (\$60) for each such Medicare 911 transport ("Vehicle Expense Reimbursement") to account for Client's contribution of vehicle expenses. The parties hereby acknowledge and agree that the Vehicle Expense Reimbursement is fair market value for the vehicle expenses provided by Client hereunder.

(c) **Client Not Responsible for Billing.** Provider shall not bill Client for any Services rendered or look to Client to act as the guarantor of payment. Client waives all right to bill for Services rendered hereunder.

(d) **Billing For MICU Transports.** Notwithstanding subsections (a) through (c) above, in the event the patient is ultimately transported by a mobile intensive care unit ("MICU") that arrives at the scene of the call, the responsibility for billing for such transport shall lie solely with the MICU and Provider shall not bill any third party for the transport of such patient.

10. **TERM AND RENEWAL.**

(a) **Initial Term.** This Agreement shall be for an initial term of five (5) years commencing on January 1, 2011 and expiring on December 31, 2015 (the "Initial Term").

(b) **Fee Adjustment.** Ninety (90) days prior to each Anniversary during the Term of this Agreement, Provider shall undertake a review of the Medical Service Fee, and Client shall undertake a review of the amount of the Vehicle Expense Reimbursement, each of which may be adjusted (increased or decreased, as the case may be) upon the mutual agreement of the Parties.

11. TERMINATION.

(a) Termination Without Cause. Either Party may terminate this Agreement for any or no reason upon sixty (60) days advance written notice.

(b) Termination for Cause. Either Party may immediately terminate this Agreement for cause at any time, provided that, except as otherwise set forth herein, in the event of a breach of this Agreement, the non-breaching Party gives written notice of such breach to the breaching Party, and the breaching Party fails to cure the same in a manner reasonably acceptable to the non-breaching Party within thirty (30) days of receiving such notice. For purposes of this Agreement, the term “for cause” shall include, but shall not be limited to, a Party’s material breach of any term, representation, covenant, or condition of this Agreement.

(c) Conditions of Termination. Upon termination or expiration of this Agreement for any reason, as of the effective date of such termination or, expiration, neither Party shall have any further obligations under the Agreement except as set forth in Section 14(a) hereof.

(d) Jeopardy. Notwithstanding anything contained herein to the contrary, in the event the performance by either Party of any term, covenant, condition or provision of this Agreement jeopardizes the licensure of Provider, or either Party’s respective participation in, or payment or reimbursement from, Medicare, Medicaid, Blue Cross or other third Party payor, or either Party’s or any of such Party’s affiliates’ full accreditation by The Joint Commission or any other state or nationally recognized accreditation organization, or the tax-exempt status of either Party or any of its affiliates, or the tax-exempt status of either Party’s or any of its affiliates’ property or financing (or the interest income thereon, as applicable), or if for any other reason said performance should be deemed in violation of any statute, ordinance, or be otherwise deemed illegal, or be deemed unethical by any recognized body, agency, or association in the medical or hospital fields, either Party may, at its option (i) terminate this Agreement immediately; or (ii) initiate negotiations to resolve the matter through amendments to this Agreement, and if the Parties are unable to resolve the matter within thirty (30) days thereafter, either Party may, at its option and upon written notice to the other Party, immediately terminate this Agreement.

12. COMPLIANCE WITH CHI STANDARDS OF CONDUCT. Client recognizes that it is essential to the core values of Provider that all persons and entities employed by or otherwise contracting with Provider at all times conduct themselves in compliance with the highest standards of business ethics and integrity and applicable legal requirements, as reflected in the Catholic Health Initiatives Standards of Conduct, as may from time to time be amended by Catholic Health Initiatives. As of the date of this Agreement the Standards of Conduct are set forth in Our Values & Ethics at Work Reference Guide (“E@W Guide”), which is available at the following website: <http://www.catholichealthinit.org/body.cfm?id=37826>. Client acknowledges that Client has electronically accessed, obtained or otherwise received a copy of the E@W Guide and acknowledges that Provider is required to act in a manner consistent with, and to at all times abide by, such Standards of Conduct, to the extent the same are applicable to the Services provided hereunder. In the event that Provider determines in good faith that Provider cannot comply with its obligations under this Agreement in compliance with the

Standards of Conduct, Provider may, upon notice to Client, immediately terminate this Agreement without penalty.

13. ETHICAL AND RELIGIOUS DIRECTIVES. Client agrees that all Services to be furnished by Provider hereunder shall be performed in accordance with the Ethical and Religious Directives for Catholic Health Care Services, Fifth Edition, as promulgated by the United States Conference of Catholic Bishops and the United States Catholic Conference as amended from time to time, and as interpreted by the local bishop. The Ethical & Religious Directives are available at the website: <http://www.usccb.org/bishops/directives.shtml>. In the event that Provider determines in good faith that Provider cannot comply with its obligations under this Agreement pursuant to this Section 13, Provider may, upon notice to Client, immediately terminate this Agreement without penalty.

14. MISCELLANEOUS PROVISIONS.

(a) Indemnification. Provider and Client indemnify and hold each other and their respective affiliates, officers, directors, employees and agents harmless from and against any liability, loss, expense (including reasonable attorney's fees) or claims for injury or damage arising out of or related to any omission, fault, negligence or willful misconduct by the other Party, or its employees, officers, directors, affiliates and agents in connection with its obligations under this Agreement. The indemnification obligations contained in this Paragraph 14(a) shall continue in full force and effect for a period of one (1) year following the termination or expiration of this Agreement for any reason whatsoever.

(b) Governing Law. The validity, enforceability and interpretation of any of the clauses of this Agreement shall be governed by the laws of the State of New Jersey. Any action brought hereunder shall be conducted in the state or federal courts located Morris County, New Jersey.

(c) Entire Agreement. This Agreement contains the entire understanding of the Parties and there are no representations, warranties, or undertakings other than those expressly set forth herein.

(d) Modifications or Waiver. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed by the Party making the waiver. The failure of either Party to insist upon strict performance of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

(e) Severability. If any provision of this Agreement is found to be invalid or unenforceable by any court or other lawful forum (including an arbiter), such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of this Agreement, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.

(f) Notice. Any notice required to be given pursuant to the terms and conditions hereof, shall be in writing and personally delivered or sent via national overnight courier service, addressed as follows:

To Provider: Saint Clare's Hospital, Inc.
Administrative Director, Support Services
400 West Blackwell Street
Dover, New Jersey 07801

and Saint Clare's Hospital, Inc.
Legal Services Department
400 West Blackwell Street
Dover, New Jersey 07801

To Client: Borough of Mt. Arlington
Attention: Administration
419 Howard Boulevard
Mt. Arlington, New Jersey 07856

(g) Prior Agreements. This Agreement supersedes any and all prior agreements relative to the matters herein addressed and any such prior agreements existing as of the commencement date of this Agreement are hereby declared null and void.

(h) Assignment. Except as otherwise expressly provided in this Agreement, neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, however that Provider may assign its rights and obligations under this Agreement to an affiliate.

(i) Access to Records. If either of the Parties carries out any of the duties of this Agreement through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of the United States Department of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of the costs incurred pursuant to such subcontract.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

BOROUGH OF MT. ARLINGTON

By: _____
Name: _____
Title: _____

SAINT CLARE'S HOSPITAL

By: Suellyn Ellerbe
Name: Suellyn Ellerbe
Title: Executive Vice President, Chief Operating Officer, Chief Nursing Officer

EXHIBIT A

As of the date of this Agreement, Provider shall have in full force the insurance coverage listed below.

<u>TYPE</u>	<u>AMOUNT OF COVERAGE</u>	<u>CARRIER</u>
General Liability	\$8/8 million*	First Initiatives Insurance, Ltd.
Automobile	\$1 million CSL \$2 million - Ambulance	ACE American Insurance Co.
Professional Liability	\$8/8 million*	First Initiatives Insurance, Ltd.
Workers Compensation	Statutory	Sedgwick Insurance Co.
Excess General and Professional Liability	\$50/50 million*	XL Capital

* per occurrence/in the aggregate

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