

**NOTICE OF FIRST READING
CONTRACTUAL AGREEMENT AND LEASE
MERCER COUNTY ANIMAL SHELTER**

The public is hereby notified that on Tuesday, August 14, 2018 at 5:30 p.m. in the County Commission Courtroom at the Mercer County Courthouse, the Mercer County Commission will conduct the First Reading of a Contractual Agreement and Lease for the Mercer County Animal Shelter.

Copies of the Contractual Agreement and Lease may be obtained in the office of the Mercer County Commission or by emailing your request to mercercocommission@frontiernet.net

Gene Buckner, President
Mercer County Commission

CONTRACTUAL AGREEMENT AND LEASE

This Contractual Agreement and Lease (Agreement) made and entered in to this the ____ day of _____ 2018, by and between the Mercer County Commission, party of the first part, hereinafter referred to as "Commission" and the Mercer County Animal Shelter, Inc. a corporation, hereinafter referred to as "MCAS, Inc."

NOW, THEREFORE, WITNESS: that for and in consideration of the mutual promises contained herein, the parties agree as follows:

1. The Commission shall continue to own the property and structure now known as the Mercer County Animal Shelter, located at 961 Shelter Rd, Princeton, West Virginia 24739. MCAS, Inc. will lease the physical facility and the facility's contents for one dollar \$1.00 per year, with additional consideration to be the balance of the operating costs of the facility and payroll expenses by MCAS, Inc., as provided herein.
2. MCAS, Inc. shall operate the facility for the primary purpose of the care, maintenance, and adoption of dogs under the terms and conditions of this agreement and such rules and regulations as may be promulgated by the Commission now or while this agreement remains in effect. Any such rule or regulation promulgated by the Commission after execution of this Agreement shall either be 1) with the consent of MCAS, Inc., or 2) effective only after ninety (90) days written notice to MCAS, Inc., unless otherwise required by law to take effect sooner.
3. The Commission shall have access to the premises in order to carry out its duties during regular business hours or at other times by appointment or mutual agreement of the parties. Mercer County Animal Control officers shall have unlimited access to the drop box area of the Shelter.
4. MCAS, Inc. shall employ a person to manage and supervise the facility and to otherwise supervise and carry out the duties of MCAS, Inc. under this agreement, who shall be designated the Mercer County Animal Shelter Director and who hereinafter shall be referred to as "Shelter Director."
5. The Commission shall appoint, employ and supervise an Animal Control Officer(s). The Animal Control Officer(s) will work closely with the Shelter Director and MCAS, Inc., but will not be employed or supervised by MCAS, Inc.
6. The Commission and MCAS, Inc. agree that the County's first-year subsidy will be capped at Two-Hundred Eighty-Six Thousand and Five-Hundred Dollars (\$286,500.00). The parties agree that the payment schedule will be Fifty-Thousand Dollars (\$50,000.00) for the first month, payable upon MCAS, Inc. assuming operations of the Shelter, and Twenty-One Thousand and Five-Hundred (\$21,500.00) a month for months 2-12, payable on the first of each calendar month. This Contractual Agreement and Lease will be reviewed annually and may be renewed based upon the mutual agreement of the

parties and based upon an annual review of the subsidy and funds. Nothing in this agreement shall be construed as requiring the Commission to continue the same amount of the subsidy during any renewal period, but such subsidy will be negotiated prior to an agreement of any renewal term.

7. MCAS, Inc. agrees that one member of the Mercer County Commission will be selected by the Mercer County Commission to serve as a member on the board of directors of MCAS, Inc. during the term, and any renewal term of this agreement.
8. The Commission will transfer the Spay/Neuter funds to MCAS, Inc., including, but not limited to, money raised for the purpose of spaying and neutering of animals in the Mercer County area and currently on deposit.
9. Mercer County Animal Control officers will file for reimbursement of bonds for all animal seizures granted in Circuit, Magistrate, and/or Municipal Court. Upon receipt of such bond, the Commission shall reimburse MCAS, Inc. for any veterinary cost and boarding cost that exceed five (5) days.
10. Except as provided in Paragraph 5 of this Agreement, MCAS, Inc. shall pay salaries, maintenance of all the facilities, equipment, and vehicles and all other costs associated with the maintenance of animals at the Facility. The primary use of the Shelter by MCAS, Inc. is for the care and adoption of dogs. Other small domestic animals may be housed, cared for and adopted out by MCAS, Inc. on the premises, provided that the care of dogs is not neglected. No other animals shall be maintained at the shelter if there is no room for dogs. Care and adoption of any other animals, other than as provided by law or provided herein, shall be at MCAS, Inc.'s sole expense.
11. On or before July 1 of each contract year, MCAS, Inc. shall certify to the Commission of the completeness of its corporate records, and the acquisition and current premium maintenance of general Liability, Automobile Liability, Professional/Management Liability, and Employment Practices Liability coverages; and that the Mercer County Commission is endorsed as an additional insured on all policies. Each such policy must include coverage for employees, agents and volunteers in an amount not less than \$1 million per occurrence, \$3 million aggregate and MCAS, Inc. shall continue to maintain said coverage at all times during the term and any renewal term of this Agreement. MCAS, Inc. will also obtain bonding for the Shelter Director at a level not less than \$100,000.
12. MCAS, Inc.'s books shall be open to inspection by the Commission during regular business hours or other times by appointment or mutual agreement of the parties. The books for both MCAS, Inc. and the facility must be audited *annually* by a Certified Public Accountant having no conflict of interest. The Mercer County Commission is to be provided with a copy of the Audit report for MCAS, Inc. directly from the Auditor on or before October 31, 2019 and annually every year thereafter.

13. MCAS, Inc. shall be responsible for complying with all state, local, and federal laws in regard to the euthanization for all animals, including, but not limited to West Virginia Code 7-10-4(e) and 7-10-5, and will further comply with the recommendations of the Humane Society of the United States. The parties acknowledge that Mercer County Animal Control officers will no longer be licensed euthanasia technicians but will follow the same or similar protocol of securing veterinary services for animals needing same prior to such animals being received by MCAS, Inc.
14. MCAS, Inc. may make animals available for public adoption at the facility. All animals adopted shall be sterilized as a pre-requisite condition to adoption, except those too young for the procedure. MCAS Inc. may sell other items and products related to the care and control of animals and retain all money realized therefrom.
15. The parties agree that a 90 day written notice will be required from either party prior to either party terminating this contractual agreement and lease before the end of the contract period.
16. MCAS, Inc. agrees to indemnify the Commission and its members for any liability created by MCAS, Inc. during its operation of the facility. The Commission agrees to indemnify MCAS, Inc. and its directors, officers, and agents for any liability created by the Commission or its agents during MCAS, Inc.'s operation of the facility.
17. If any part of this Agreement is found to be invalid, it is agreed to be severed from the Agreement and the remaining parts of the Agreement will be valid.
18. The parties shall seek to resolve any disputes through mediation or arbitration before taking any steps toward litigation.
19. The Commission shall sign over and deliver the title of the _____ Ford Transit Van, VIN # _____, (known as the "Shelter Van") to MCAS, Inc. The Commission shall also physically deliver the Shelter Van to the possession of MCAS, Inc.
20. The parties agree that any Estate funds that are intended for or designated to the Mercer County Animal Shelter, any derivation of the name Mercer County Animal Shelter, or for the care for, or facilitating the adoption of animals in the Mercer County Area, which are received by MCAS, Inc. shall be the exclusive property of MCAS, Inc. and are to be used solely for the aforementioned purpose(s). The parties further agree that any Estate funds that are intended for or designated to the Mercer County Animal Shelter, any derivation of the name Mercer County Animal Shelter, or for the care for, or facilitating the adoption of animals in the Mercer County Area, which are received by the Commission shall be the exclusive property of the Commission and are to be used solely for the aforementioned purpose(s).

21. Nothing in this Agreement shall be construed as to require MCAS, Inc. to take any action that would cause MCAS, Inc. to lose its tax exempt status (501(c)(3) status) as defined in the Internal Revenue Code of 1986, as amended. Any such requirement of MCAS, Inc. by this Agreement will be found invalid and unenforceable as against MCAS, Inc.

22. Notices.

All notices shall be in writing delivered as follows:

(a) If to Commission, to:

Mercer County Commission
1501 West Main Street, Suite 210
Princeton, WV 24740

And to:

Mercer County Prosecuting Attorney
Attn: George Sitler
120 Scott Street, Suite 200
Princeton, WV 24740

(b) If to MCAS, Inc., to:

Michelle Muncy
500 Oakhurst Avenue
Bluefield, West Virginia 24701

And to:

Brewster, Morhous, Cameron, Caruth,
Moore, Kersey & Stafford, PLLC
418 Bland Street
Bluefield, West Virginia 24701
Attn: Brian K. Cochran, Esq.

23. Equal Preparation. The parties acknowledge and agree that each party has participated equally in the negotiation and preparation of this Agreement and that the rule of law that ambiguities contained in a contract shall be construed against the drafter thereof shall not be applied to this Agreement or the interpretation of any term or provision hereof.

24. Entire Agreement. This Agreement is exclusive statement of the agreement among the parties concerning the subject matter hereof. All negotiations among the parties are merged into this Agreement, and there

are no representations, warranties, covenants, understandings or agreements, oral or otherwise, in relation thereto among the parties other than those incorporated herein and to be delivered hereunder.

INTENDING TO BE LEGALLY BOUND, the parties have signed this Agreement as of the date first above written.

Mercer County Commission

By: _____

Its: _____

Mercer County Animal Shelter, Inc.

By: _____

Its: _____