

# IDEAL IMPACT PAYMENT PLAN AGREEMENT

THIS IDEAL IMPACT PAYMENT PLAN AGREEMENT **No. 8888** (hereafter referred to as "Agreement") dated as of **November 11, 2019** by and between **Ideal Impact, Inc.**, a Texas corporation (herein referred to as "Ideal Impact"), and **Wylie Independent School District**, a political subdivision or agency of the State of Texas (hereinafter referred to as "District").

WITNESSETH: The District has entered into that certain Energy Services Contract (the "Services Contract") with Ideal Impact whereby District has agreed to contract with Ideal Impact for the personal property and related services that are more fully described on EXHIBIT A attached hereto (the "Property") from Ideal Impact; and

WITNESSETH: Ideal Impact has agreed to contract with the District for the Property and in furtherance of the providing by Ideal Impact of payment terms to the District in connection with the District's acquisition of the Property, and in consideration of the mutual covenants and conditions hereinafter set forth, pursuant to the provisions of the Public Property Finance Act, Chapter 271, Subchapter A, Texas Local Government Code, as amended (the "Act"), the parties agree as follows:

**1. Term and Payments.** The District hereby covenants and agrees to pay to the order of Ideal Impact and Ideal Impact's successors and assigns those installment amounts in those sums set forth on EXHIBIT B attached hereto (the "Payments") on or before those dates per installment that are more fully set forth on EXHIBIT B (the "Payment Dates"). It is acknowledged and understood that Ideal Impact may assign its rights hereunder to a third party and that notice of said assignment shall be provided to the District and that the District, thereafter, shall look to and consider said assignee as the party to whom all of the District's duties hereunder are owed.

**2. Payments Unconditional.** Upon this Agreement taking effect the obligation of the District to make the Installment Payments set forth in the Installment Payment Schedule shall be absolute and unconditional in all events and shall not be subject to any set-off, defense, counterclaim or recoupment for any reason. Pursuant to the Act, the Payments may be payable from a pledge of all or any part of any revenues, funds, or taxes available to the governmental agency for its public purposes (primarily including funds from energy savings as contemplated in the Services Contract). To the extent permitted by law, the District hereby pledges its Ad Valorem tax as security for this obligation.

**3. Taxes.** The District agrees to directly pay all taxes, insurance and other costs of every nature associated with its ownership of the Property.

**4. District's Covenants and Representations.** District covenants and represents as follows:

(a) District represents that it has full power and authority to enter into this Agreement which has been duly authorized, executed, and delivered by District and is a valid and binding obligation of District enforceable in accordance with its terms, and all requirements for execution, delivery and performance of this Agreement have been, or will be, complied with in a timely manner;

(b) All Payments hereunder have been duly authorized and will be paid when due;

(c) There are no pending or threatened lawsuits or administrative or other proceedings contesting the authority for, authorization or performance of, or expenditure of funds pursuant to, this Agreement;

(d) Information supplied and statements made by District in any financial statement or current budget prior to or contemporaneously with the Agreement are true and correct;

(e) District has an immediate need for, and expects to make immediate use of, substantially all the Property, which need is not temporary or expected to diminish in the foreseeable future;

(f) There are no circumstances presently affecting the District that could reasonably be expected to alter its foreseeable need for the Property or adversely affect its ability or willingness to budget funds for the payments of sums due hereunder.

(g) No lease, rental agreement, installment-purchase agreement, payment agreement or contract for purchase to which District has been a party at any time during the past ten (10) years has been terminated by District as a result of insufficient funds being appropriated in any Fiscal Year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which District has issued during the past ten (10) years.

(h) District will pay the Installment Payment Due by check, wire transfer, or ACH only.

(i) District has complied with all applicable procurement laws in acquiring the Property.

**5. Use and Licenses.** The District shall pay and discharge all operating and other expenses of every nature associated with its use of the Property. The District shall obtain, at its expense, all registrations, permits and licenses, if any, required by law for the installation and operation of the Property.

**6. No Maintenance by Subsequent Assigns.** It is understood and agreed to by the parties that any assignee of Ideal Impact shall not be obligated to make any repairs or replacements to the Property whatsoever.

**7. Alterations.**

(a) District may, at its own expense, install or place in or on, or attach or affix to, the Property such equipment or accessories as may be necessary or convenient to use the Property for its intended purposes provided that such equipment or accessories do not impair the value or utility of the Property.

(b) Without the written consent of Ideal Impact, District shall not make any other alterations, modifications or improvements to the Property except as required or permitted hereunder. Any other alterations, modifications or improvements to the Property shall immediately become part of the Property, subject to the provisions hereof. Without the prior written consent of Ideal Impact, District shall not affix or attach any of the Property to any real property. The Property shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or any improvement thereon.

**8. Liens.** District shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Property, title thereto or any interest therein, except the respective rights of Ideal Impact and District hereunder.

**9. Damage to or Destruction of Property.** District shall bear the entire risk of loss, damage, theft or destruction of the Property from any and every cause whatsoever, and no loss, damage, destruction or other event shall release District from the obligation to pay the full amount of the Installment Payments or from any other obligation under this Agreement. In the event of damage to any item of the Property, District will immediately place the same in good repair, with the proceeds of any insurance recovery applied to the cost of such repair. If Ideal Impact determines that any item of Property is lost, stolen, destroyed or damaged beyond repair, District at the option of District will either (a) replace the same with like property in good repair or (b) on the next Installment Payment Date, pay Ideal Impact (i) all amounts then owed by District to Ideal Impact under this Agreement, including the Installment Payment due on such date, and (ii) an amount equal to the applicable Early Redemption Value set forth in the Installment Payment Schedule.

**10. No Warranty by Subsequent Assigns.** IT IS UNDERSTOOD AND AGREED TO BY THE PARTIES THAT ANY ASSIGNEE OF IDEAL IMPACT SHALL NOT BE LIABLE FOR REPRESENTATIONS, WARRANTIES, AND SERVICE AGREEMENTS RELATING TO THE PROPERTY MADE OR ENTERED INTO BY THE MANUFACTURERS OR SUPPLIERS OF THE PROPERTY, AND, ANY ASSIGNEE OF IDEAL IMPACT HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE TITLE, MERCHANTABILITY, CONDITION, QUALITY OR FITNESS OF THE PROPERTY DESCRIBED IN EXHIBIT A FOR ANY PARTICULAR PURPOSE OR THE CONFORMITY OF THE PROPERTY TO SPECIFICATION OR PURCHASE ORDER, ITS DESIGN, DELIVERY, INSTALLATION OR OPERATION.

**11. Prepayment.** The amount of each required Installment Payment paid by the District in excess of the Minimum Payment Amount set forth on Exhibit B shall be considered a partial prepayment of the total outstanding Project Fee; provided, however, Ideal Impact shall be under no obligation to reamortize the Installment Payment Schedule at any time. Upon the District's timely payment of Project Fee specified in Exhibit B, District shall be deemed to have acquired all of Ideal Impact's right, title and interest in and to the Property, free of any lien, encumbrance or security interest except such liens, encumbrances or security interest as may be created, or permitted and not discharged, by District but without other warranties. Payment of the applicable Project Fee balance shall occur on the applicable Installment Payment Date specified in the Installment Payment Schedule, at which time Ideal Impact shall, unless not required hereunder, deliver to District proper documentation showing Ideal Impact's interest in the Property free from any lien, encumbrance or security interest except such as may be created, or permitted and not discharged, by District but without other warranties. Upon District's final payment of the Project Fee and Ideal Impact's actual or constructive delivery of proper documentation showing the Agreement is paid in full, this Agreement shall terminate except as to obligations or liabilities accruing hereunder prior to such termination.

**12. Default and Ideal Impact's Remedies.**

(a) The occurrence of one or more of the following events shall constitute an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

- (1) District fails to make any payment hereunder when due or within ten (10) days thereafter;
- (2) District fails to comply with any other covenant, condition or agreement of District hereunder for a period of the ten (10) days after notice thereof;
- (3) Any representation or warranty made by District hereunder shall be untrue in any material respect as of the date made;
- (4) District makes, permits or suffers any unauthorized assignment, transfer or other disposition of this Agreement or any interest herein, or any part of the Property or any interest therein; or
- (5) District becomes insolvent; or admits in writing its inability to pay its debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee, receiver or custodian for the District or a substantial part of its property; or, in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed for District or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against District and, if instituted against District, is consented to or acquiesced in by District or is not dismissed within sixty (60) days.

(b) Upon the occurrence of any Event of Default:

(1) In every case Ideal Impact or its successors or assigns, or an authorized representative thereof, including, but not limited to, an attorney or trustee therefor, may proceed against the District for the purpose of protecting and enforcing the rights of Ideal Impact or its successors or assigns under this Agreement, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of Ideal Impact or its successors or assigns or any combination of such remedies; provided that none of such parties shall have any right to declare the balance of the Finance Contract Payments to be immediately due and payable as a remedy because of the occurrence of an Event of Default;

(2) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy, and no delay or omission to exercise any right or power occurring upon any Event of Default shall impair any such right or power or be construed to be a waiver thereof and all such rights and powers may be exercised as often as may be deemed expedient.

**13. Assignment.** Without Ideal Impact's prior written consent, District will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Agreement or the Property or any interest in this Agreement or the Property or (ii) sublet or lend the Property or permit it to be used by anyone other than District or District's employees. Ideal Impact may assign its rights, title and interest in and to this Agreement and any other documents executed with respect to this Agreement and/or grant or assign a security interest in this Agreement, in whole or in part. Any such assignees shall have all of the rights of Ideal Impact under this Agreement. Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. No assignment or reassignment of any of Ideal Impact's rights, title or interest in this Agreement or the Property shall be effective with regard to District unless and until District shall have received a copy of the document by which the assignment or reassignment is made, disclosing the name and address of such assignee. No further action will be required by Ideal Impact or by District to evidence the assignment.

**14. Personal Property.** The Property is and shall at all times be and remain personal property.

**EXHIBIT A**

DESCRIPTION OF PROPERTY - Energy Efficiency as follows:

DESCRIPTION

- i) Installing remote controllers on 45 HVAC units
- ii) Improving economizer control on 827 tons of HVAC units
- iii) Energy Optimization of 461 pieces of mechanical equipment by our mechanical team
- iv) Weatherization of all buildings included in agreement

PROPERTY LOCATION:

Wylie ISD  
District Wide

**15. Ownership of Property.** Upon acceptance of the Property by District hereunder, District shall have ownership of the Property during the term of this Agreement.

**16. Ideal Impact's Right to Perform for District.** If District fails to make any payment or perform or comply with any of its covenants or obligations hereunder, Ideal Impact may, but shall not be required to, make such payment or perform or comply with such covenants and obligations on behalf of District, and the amount of any such payment and the expenses (including but not limited to reasonable attorneys' fees) incurred by Ideal Impact in performing or complying with such covenants and obligations, as the case may be, together with interest thereon at the rate of 0.8% per month, shall be payable by District upon demand.

**17. Interest on Default.** If District fails to pay any Installment Payment specified in Section 1 hereof within ten (10) days after the due date thereof, District shall pay to Ideal Impact interest on such delinquent payment at the rate of 0.8% per month from the due date until paid.

**18. Notices.** Any notices to be given or to be served upon any party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail, and shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their respective addresses designated on the signature page of this Agreement or at such other address as either party may hereafter designate.

**19. Security Interest.**

(a) An executed copy of this Agreement shall evidence the indebtedness of the District as provided herein and shall constitute a security agreement pursuant to applicable law, with Ideal Impact, its successors or assigns as the secured party. The grants, lien, pledge and security interest of Ideal Impact, its successors or assigns created herein shall become effective immediately upon and from the delivery of this Agreement, and the same shall be continuously effective for so long as any Installment Payments are outstanding.

(b) A fully executed copy of this Agreement and the proceedings authorizing same shall be kept at all times and shall be filed and recorded as a security agreement among the permanent records of the District. Such records shall be open for inspection to any member of the general public and to any individual, firm, corporation, governmental entity or other person proposing to do or doing business with, or having or asserting claims against the District, at all times during regular business hours.

(c) If, in the opinion of counsel to the District or to Ideal Impact, its successors or assigns, applicable law ever requires filings additional to the filing pursuant to subsection (b) of this section in order to preserve and protect the priority of the grants, assignments, lien, pledge and security interest of Ideal Impact, its successors or assigns created herein as to all Installment Payments, then the District shall diligently and regularly make such filings to the extent required by law to accomplish such result.

**20. Continuing Disclosure.** Upon request, District agrees to provide current audited financial statements, prepared by a certified public accountant. Periodic financial statements shall include a combined balance sheet as of the end of each such period, and a combined statement of revenues, expenditures and changes in fund balances, from the beginning of the then fiscal year to the end of such period. These reports must be certified as correct by one of District's authorized agents. If District has subsidiaries, the financial statements required will be provided on a consolidated and consolidation basis.

**21. Miscellaneous.**

**(a)** Time is of the essence. No covenant or obligations hereunder to be performed by District may be waived except by the written consent of Ideal Impact, and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Ideal Impact from invoking such remedy at any later time prior to District's cure of the condition giving rise to such remedy. Ideal Impact's rights hereunder are cumulative and not alternative.

**(b)** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas.

**(c)** This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, altered or changed in any respect except by a written document signed by both Ideal Impact and District.

**(d)** Any term or provision of this Agreement found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, invalidating the remainder of this Agreement.

**(e)** That Ideal Impact hereunder shall have the right at any time or times, by notice to District, to designate or appoint any person or entity to act as agent or trustee for Ideal Impact for any purposes hereunder.

**(f)** Use of the neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

**(g)** The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**(h)** Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, where permitted by this Agreement.

**(i)** In the case of any dispute between the Services Contract and this Agreement this Agreement's terms shall prevail.

In WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019.

Ideal Impact: Ideal Impact, Inc.

\_\_\_\_\_  
Authorized Signature  
1245 S Main Street  
Suite 140  
Grapevine, Texas 76051

Witness Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

District: Wylie Independent School District

\_\_\_\_\_  
Steve Keenum, Board President  
6251 Buffalo Gap Rd.  
Abilene, TX 79606

### Incumbency Certificate

I, Chris McCurley, do hereby certify that I am the duly elected or appointed and acting Board Secretary (Keeper of the Records), of Wylie Independent School District, a political subdivision or agency duly organized and existing under the laws of the State of Texas, that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) named above are the duly elected or appointed officer(s) of such entity holding the office(s) set forth opposite their respective name(s). I further certify that (i) the signature(s) set above their respective name(s) and title(s) are their true and authentic signature(s), and (ii) such officers have the authority on behalf of such entity to enter into that certain Ideal Impact Payment Plan Agreement dated as of November 11, 2019 between such entity and Ideal Impact, Inc.

IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal of such entity hereto this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

By District:

\_\_\_\_\_  
Chris McCurley, Board Secretary

# EXHIBIT B

## >> SCHEDULE OF INSTALLMENT PAYMENTS <<

IDEAL IMPACT PAYMENT PLAN AGREEMENT No. 8888

BY AND BETWEEN

**Ideal Impact:** Ideal Impact, Inc. and **District:** Wylie Independent School District

Schedule Dated as of November 22, 2019

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	Payment date	Min Pymt Amt
1	7/7/2020	\$16,745.65
2	10/7/2020	\$16,745.65
3	1/7/2021	\$16,745.65
4	4/7/2021	\$16,745.65
5	7/7/2021	\$16,745.65
6	10/7/2021	\$16,745.65
7	1/7/2022	\$16,745.65
8	4/7/2022	\$16,745.65
9	7/7/2022	\$16,745.65
10	10/7/2022	\$16,745.65
11	1/7/2023	\$16,745.65
12	4/7/2023	\$16,745.65
13	7/7/2023	\$16,745.65
14	10/7/2023	\$16,745.65
15	1/7/2024	\$16,745.65
16	4/7/2024	\$16,745.65
17	7/7/2024	\$16,745.65
18	10/7/2024	\$16,745.65
19	1/7/2025	\$16,745.65
20	4/7/2025	\$16,745.65
21	7/7/2025	\$16,745.65
22	10/7/2025	\$16,745.65
23	1/7/2026	\$16,745.65
24	4/7/2026	\$16,745.65
25	7/7/2026	\$16,745.65
26	10/7/2026	\$16,745.65
27	1/7/2027	\$16,745.65
28	4/7/2027	\$16,745.65
29	7/7/2027	\$16,745.65
30	10/7/2027	\$16,745.65
31	1/7/2028	\$16,745.65
32	4/7/2028	\$16,745.65
	Project Fee	\$535,860.80

As set forth in Section 3.3, Ideal Impact shall prepare an invoice for each quarter that any amount of the Project Fee remains outstanding. Each invoice will include the amount of the Installment Payment due, calculated as set forth below, and the remaining balance of the Project Fee.

Until the District has paid a total project fee of \$535,860.80 (the "Project Fee") the District shall pay Ideal Impact, or its assigns, each quarter beginning July 7, 2020 an Installment Payment equal to the greater of (a) 80% of the Energy Savings and Rebates (as those terms are defined in the Services Contract from the preceding quarter) or (b) the Minimum Payment Amount set forth on this Exhibit B. Each Installment Payment shall be applied to the Project Fee owed to Ideal Impact until the Project Fee is paid in full.

**Accepted By District:** \_\_\_\_\_  
Steve Keenum, Board President

# CERTIFICATE OF PRE-ACCEPTANCE

IDEAL IMPACT PAYMENT PLAN AGREEMENT No. 8888 (THE "AGREEMENT")

BY AND BETWEEN

**Ideal Impact**, Ideal Impact, Inc. and **District**, Wylie Independent School District

Dated as of November 11, 2019

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1. **PRE-ACCEPTANCE:** In accordance with the Agreement and the related Services Contract, District hereby certifies that all of the services or Property described herein has not been received or accepted by District yet. However, the District agrees Ideal Impact, Inc. should be or will be paid for said future services or Property whether any services or Property has been received or accepted, all as in accordance with the Exhibit B.

By District:

\_\_\_\_\_  
Steve Keenum, Board President

For District: Wylie Independent School District

ACCEPTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

2. **PROPERTY:**

Energy Conservation Project - SEE ATTACHED EXHIBIT A.

3. **USE:** The primary use of the Property is as follows-

**PRIMARY USE-** Energy Conservation

4. **PROPERTY LOCATION:**

Wylie ISD  
District Wide

5. **INVOICING:** Invoices shall be sent to the following address, including to whose attention invoices should be directed:

Wylie Independent School District  
Accts. Payable  
6251 Buffalo Gap Rd.  
Abilene, TX 79606

# CERTIFICATE OF FINAL ACCEPTANCE

IDEAL IMPACT PAYMENT PLAN AGREEMENT No. 8888 (THE "AGREEMENT")

BY AND BETWEEN

**Ideal Impact**, Ideal Impact, Inc. and **District**, Wylie Independent School District

Dated as of November 11, 2019

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1. **ACCEPTANCE:** In accordance with the Agreement, District hereby certifies that all of the Property described herein (i) has been received by District, (ii) has been thoroughly examined and inspected to the complete satisfaction of District, (iii) has been found by District to be in good operating order, repair and condition, (iv) has been found to be of the size, design, quality, type and manufacture specified by District, (v) has been found to be and is wholly suitable for District's purposes, and (vi) is hereby unconditionally accepted by District, in the condition received, for all purposes of this Agreement, (vii) the District agrees Ideal Impact, Inc. should be or will be paid for any and all services or Property all in accordance with the Agreement.

By District:

\_\_\_\_\_  
Steve Keenum, Board President

For District: Wylie Independent School District

ACCEPTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

2. **PROPERTY:**

Energy Conservation Project - SEE ATTACHED EXHIBIT A.

3. **USE:** The primary use of the Property is as follows-

**PRIMARY USE-** Energy Conservation

4. **PROPERTY LOCATION:**

Wylie ISD  
District Wide

5. **INVOICING:** Invoices shall be sent to the following address, including to whose attention invoices should be directed:

Wylie Independent School District  
Accts. Payable  
6251 Buffalo Gap Rd.  
Abilene, TX 79606

**RESOLUTION # \_\_\_\_\_**

WHEREAS, Wylie Independent School District (the "District") has agreed, by a separate agreement, to acquire certain personal property and related services for an **Energy Conservation Project** from Ideal Impact, Inc.; and

WHEREAS, Wylie Independent School District desires to enter into that certain Ideal Impact Payment Plan Agreement dated as of November 11, 2019, by and between Wylie Independent School District and Ideal Impact, Inc., for the purpose of acquiring said "**Energy Conservation Project**". The District desires to designate the Board President as an authorized signer of the Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE Wylie Independent School District:

Section 1. That the District enters into an Ideal Impact Payment Plan Agreement with Ideal Impact, Inc. for the purpose of acquiring certain personal property and related services for an **Energy Conservation Project** from Ideal Impact, Inc.

Section 2. That the District designates the Board President as an authorized signer of the Ideal Impact Payment Plan Agreement dated as of November 11, 2019, by and between the Wylie Independent School District and Ideal Impact, Inc.

This Resolution has been PASSED upon Motion made by Board Member \_\_\_\_\_, seconded by Board Member \_\_\_\_\_ by a vote of \_\_\_\_\_ to \_\_\_\_\_ and is effective this \_\_\_\_\_, 2019.

District: Wylie Independent School District

Witness Signature

\_\_\_\_\_  
Steve Keenum  
Board President

\_\_\_\_\_  
Chris McCurley  
Board Secretary