

# O'HANLON, MCCOLLOM & DEMERATH

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TEXAS BOARD OF LEGAL SPECIALIZATION

**JUSTIN DEMERATH**

January 17, 2019

Dr. Jeremy Thomas, Superintendent of Schools and  
Members of the Board of Trustees  
Era Independent School District  
108 Hargrove Street  
Era, TX 76238

RE: Legal Representation Agreement for District Representation for Purposes of Tax Code  
Chapter 313 matters concerning Application of BT Cooke Solar LLC

Superintendent Thomas and Members of the Era ISD Board of Trustees,

The purpose of this letter is to provide you the terms and conditions under which our firm proposes to undertake all necessary legal work to process, negotiate, draft and, as requested, provide post-agreement legal advice to the Era Independent School District Board of Trustees or the Board of Trustees upon reassuming their duties (hereinafter "Client") concerning the above-referenced Application of BT Cooke Solar LLC. At all times our representation will be subject the direction of Client's Board of Trustees and executive staff. Please review the agreement, and if you wish to retain the Firm's services, execute and return the agreement to our office by either facsimile or email.

If retained, we propose to represent in the above-referenced matter as follows:

**I. Designation of Firm's Primary Counsel:** Kevin O'Hanlon, our firm's President and Managing Partner will have primary responsibility for this engagement. Mr. O'Hanlon has been practicing law in Texas for approximate 38 years and has been involved in the drafting and negotiation of Chapter 313 agreements since drafting the original Chapter 313 agreement in 2002. Other attorneys and legal and staff assistants, including Ms. Amalia Hanley in our office will, where appropriate, also be used in the course of the matters covered by this engagement letter. Ms. Hanley has also been involved in the processing Chapter 313 matters since the inception of the program. The use of all firm personnel will be based on the exercise of our professional judgment and will depend on the nature of the work to be performed and the

qualifications, skill and specialized expertise needed to perform a particular aspect of a specific engagement.

**II. Legal Representation Through Agreement Execution:** If engaged by Client, our firm will provide the following legal services with respect to the above referenced matter for the fee set forth in Paragraph III, below:

1. Review Client's existing Chapter 313 Policies and, where appropriate, recommend amended language to the Board, to ensure compliance with current statute and regulatory directives.
2. Review the Application, including Schedules A-D and all other supporting documentation for completeness; and require the Applicant, as necessary, to submit additional and/or supplementary information to ensure that the Application documents and any other required reports include all information required by the Comptroller's rules or by 34 Tex. Administrative Code § 9.1054.
3. Upon request, provide a comprehensive briefing on the mandatory procedures, rules of the Comptroller's Office, legal risks under the Texas school finance system.
4. Review, on behalf of the Client, any Amended, Supplemental Application, or any other required documentation, submitted by the Applicant for the same project, and make appropriate recommendations for action.
5. Determine whether the Application or any amended or supplemental submissions made by Applicant are sufficient, and assist the Applicant in immediately correcting any deficiencies.
6. Ensure that all requests from the Comptroller concerning the Application are expeditiously handled, and forward to the Comptroller and the Appraisal District any Amended or Supplemental Application or any other information necessary to complete the Comptroller's Application Certification or economic impact study.
7. Ensure Client is kept current on and is in compliance with all required transparency requirements.
8. Where requested, draft Board agenda items and supporting materials for Board action, in full compliance with the Texas Open Meetings Act.
9. Attend, in person any staff and/or Board meetings as necessary to keep Client informed of the status of the engagement.
10. Coordinate with Client's school finance consultants to ensure all required analyses to properly protect the District's financial interests have been completed in a timely manner.
11. Secure and forward all required supplemental information necessary to assist the staffs of the Comptroller and, as applicable, the Texas Education Agency (TEA); the Texas Workforce Commission, and the Texas Economic Development and Tourism Office with the analyses required by the rules adopted by the respective agencies.

12. Track all deadlines including Tex. Tax Code § 313.025(b) and, if required prepare and transmit extension of time documentation to the required stakeholders in order that not later than 150 days after the Application Review Start Date, an Agreement is presented to the Board for final approval or action upon a request from the Applicant for an extension of the Application Review Period has been timely executed and forwarded to the Comptroller.
13. Secure the required Certification from the Texas Comptroller's Office as a prerequisite for application approval by the Board.
14. Prepare appropriate documentation and materials, including agenda postings, to ensure a proper Public Hearing on the Application is held at which the Superintendent, the District's consultants, the Applicant, and members of the public shall have a reasonable opportunity to present their views on the proposed Application.
15. Ensure that required conflict of interest filings are prepared and reviewed at critical stages of the application approval process by all stakeholders.
16. In conjunction with the Client's school finance consultants, prepare and have presented for Board review and adoption such findings of fact regarding the Application as are required by law.
17. Review the financial impact of any proposed agreement with the Client's Board and executive staff and with the District's school finance consultants to ensure that the full financial consequences of the agreement are understood by and acceptable to Client.
18. In accordance with Client instructions, negotiate final terms of a proposed tax limitation agreement, to include the maximum possible financial protections for the Client, and in accordance with Client directives, negotiate terms for supplemental payments as are allowed under law and consistent with Client directives, and present any recommendations concerning the negotiations to the Client.
19. Ensure that the District and the Comptroller are provided draft copies of the Agreement at least twenty (20) days prior to the meeting at which the Board is scheduled to consider final approval of an Agreement, and secure Comptroller approval of such draft prior to final Board action.
20. Ensure that after final Board approval of any Chapter 313 agreement, fully executed copies of such agreement are distributed to all appropriate parties and stakeholders.

**III. Fees for Services under Section II:** Our firm policy is to charge its school district clients a flat fee of \$37,500.00 for all services provided to the District under Section II, above. For services under Section II, Client will be billed for services upon final Client approval of completed Chapter 313 Agreement, or in the event of withdrawal of the Chapter 313 application from Client consideration if Applicant no longer wishes to proceed with its Application.

**IV. Post Agreement Legal Services:** After the approval and execution of a Tax Limitation Agreement as contemplated by Section II, above, our firm will on an annual basis, provide Client with all legal representation necessary to:

1. Advise Client with respect to its obligations and entitlements under the Agreement.
2. Assist the appointed Third-Party under the Agreement with the performance of their duties.
3. Monitor new legal developments and ensure full Client compliance requirements imposed, from time-to-time by the Texas Comptroller's Office, the Texas Education Agency, or any State regulatory or Legislative agency, including audits by the State Auditor.
4. Represent the District with respect to all Public Information Act requests concerning the Chapter 313 Agreement or its compliance requirements.
5. Assemble draft and file all required reports to regulatory agencies.
6. Draft and present to the Board for possible adoption, including the drafting of required agenda items and supporting materials, all required post-agreement resolutions of Findings necessary to ensure ongoing compliance.
7. Advise Client and represent the District in all appeals or disputes with the Applicant.
8. Represent the District in all mediations or litigation arising out of the Agreement or its enforcement.

**V. Fees for Services under Section IV:** Billing for services performed from year-to year under Section IV, above will be limited the total fee which can be recovered to from the Applicant under the agreement, after the payment of the Third-Party's fees which will also be recoverable from the Applicant. In addition to the foregoing our firm will be entitled to retain any attorney's fees by a court of competent jurisdiction over matters involving the agreement. Client will not be responsible to the firm for payments of fees and/or expenses in excess of the amount set forth herein. By way of clarification, our annual fees will not cause the District to budget or expend any monies in excess of that recoverable from the Chapter 313 Applicant. For services billed under Section IV, in accordance with provisions contained in the Chapter 313 Agreement, Applicant will be directly billed for such services. All invoices will show, on their face the source of payments, ensuring that Client does not incur a net expense for the provision of services under Section IV.

#### **VI. Termination of Services**

This agreement shall continue from-year-to year, along as the Agreement executed under Section 2 remains in effect. **Client's Obligations to our firm under Sections III and V may be terminated at any time in the sole discretion of the Client.** In the event of termination by Client, our firm shall be compensated for the work performed for Client prior to the date of termination. Our firm may cancel terminate this agreement only upon ninety (90) days prior notice to client

**VII. Conflict Issues:** We have reviewed the goals that the Client wishes to achieve through this engagement, and have examined our relationship with the proposed applicant. We have not detected any conflict between our firm and your interests in this engagement.

**VIII. Submission of Additional Documentation:** Contemporaneously with the submission of this Engagement Letter we are submitting the following additional documentation

- a. A completed Vendor Conflict of Interest Disclosure Form (Texas Ethics Commission Form CIQ)
- b. Completed Internal Revenue Service Form W-9

On a personal note, I am very pleased that you are considering our firm to assist in this important project. We look forward to serving you, and we shall use our best efforts on your behalf. We firmly believe that the experience that our legal team brings to the engagement will enable the Client to both control its legal risk, while providing the highest possible benefit for the Client and its constituents.

Sincerely,



Kevin O'Hanlon  
O'HANLON, McCOLLUM & DEMERATH

AGREED TO:

By: \_\_\_\_\_  
Superintendent

**CONFLICT OF INTEREST QUESTIONNAIRE**  
For vendor doing business with local governmental entity

**FORM CIQ**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

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**2**  **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

Era ISD Board of Trustees and Superintendent

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

NONE

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

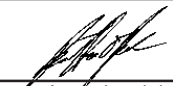
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

NONE

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**  
  
\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

1/17/2019

\_\_\_\_\_  
Date

# Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**O'Hanlon, Demerath & Castillo, P.C.**

**2** Business name/disregarded entity name, if different from above

**3** Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC     C Corporation     S Corporation     Partnership     Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► \_\_\_\_\_

**Note:** Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ► \_\_\_\_\_

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  
Exempt payee code (if any) \_\_\_\_\_  
Exemption from FATCA reporting code (if any) \_\_\_\_\_  
*(Applies to accounts maintained outside the U.S.)*

**5** Address (number, street, and apt. or suite no.) See instructions.  
**808 West Avenue**

**6** City, state, and ZIP code  
**Austin, Texas 78701**

**7** List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

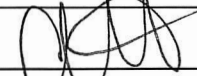
Social security number									
			-						
or									
Employer identification number									
2	6	-	2	6	9	1	9	1	5

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign Here**    Signature of U.S. person ►     Date ► 9/6/18

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.