

**MOSS**  
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JUNE 21, 2011

Scott Broadhead  
Deputy Tooele County Attorney  
Tooele County Board of Equalization  
74 South 100 East, Suite 26  
Tooele, Utah 84074

Representation and Retainer Agreement

Dear Mr. Broadhead:

You have asked our firm to provide certain services for the Tooele County Board of Equalization regarding the Property Tax Appeal of Miller Motorsports Park, Utah, LLC (Appeal No. 11-348). This letter sets forth the terms under which we will represent you. We need you to specifically review the provision concerning binding arbitration on page 2. Unless you write us to the contrary, these terms of agreement will be used to govern our representation of you.

**Fees for Service and Costs**

You will be pay for our services at our current hourly rates which range from \$130.00 to \$300.00 per hour. Duane Moss will be the attorney primarily responsible for representing you at the hourly rate of \$225.00. In the course of representing you, we will discuss the ongoing costs of our legal work. It is difficult to estimate costs with any accuracy; accordingly, please understand that any estimates of fees and costs are not guarantees. We will however keep you informed of our work and obtain your approval should any estimate become unobtainable do to unforeseen circumstances. You will also be responsible to pay all out-of-pocket costs associated with our representation of you, including required travel, reporter costs, expert fees, legal filings and document recordings.

Our firm requires our clients to deposit retainers in trust to be applied to legal fees, expenses and reimbursable advances and to legal fees owed after satisfaction of the initial retainer. We have agreed to waive the initial retainer. If we require a retainer in the future, the retainer will be placed in our client trust fund on your account and we will make disbursements from it to our firm's general account for amounts we bill you as services are rendered. We will send you a monthly statement of account showing the amounts charged against your trust account retainer and showing the balance in your trust account. Once the retainer balance is exhausted you must pay an additional retainer, which will again be either deposited in trust or credited to any outstanding balance, and you must continue advancing a retainer if any

subsequent retainers are exhausted. Any retainer not earned at the time the case is completed or services are terminated will be totally refunded to you.

You will be billed monthly for all fees, costs, or expenses incurred in connection with our representation of you. Any fees and costs not satisfied by the retainer are due within fifteen (15) days of the invoice date. Any amount billed and unpaid after thirty (30) days from the date of invoice shall bear and accrue interest at the rate of fifteen percent (15%) per annum until paid.

If you object to any part of your bill, we encourage you to contact us immediately so that that we can clarify the matter expeditiously. *Unless you furnish our office a written objection to any bill or statement within fifteen (15) days from the statement date, all of the charges will be assumed to be totally acceptable to you.*

#### **Arbitration and Attorneys' Fees**

Any dispute over our legal fees shall be submitted to the Fee Arbitration Committee of the Utah State Bar Association for prompt resolution, and both of us agree to be bound by the results of such arbitration.

All reasonable attorneys' fees incurred in any dispute between us concerning the interpretation of or the performance under this agreement, or any dispute regarding the nature and quality of our services, including any claim for damages, must be paid by the losing party to the prevailing party.

#### **Responsibilities of Parties**

To enable us effectively to perform the services contemplated, it is essential that you disclose fully and accurately all facts and keep us apprised of all developments relating to this matter. You will need to communicate and provide all information, documentation, and records needed to represent you in this matter.

In undertaking to represent you, we agree to use our best efforts. You however acknowledge that we have made no representations and given no assurances or guarantees regarding the likely outcome of this matter.

In accordance with the Standards of Professionalism and Civility, we will endeavor to carry out our representation of you with civility, courtesy, and fair dealing with all parties involved. Accordingly we will not respect any demand that we abuse anyone, or engage in any offensive or improper conduct.

In accordance with the Standards of Professionalism and Civility, we reserve the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing your rights, such as extensions of time, continuances, adjournments, and admissions of facts. However, we will not reach a settlement or a substantial agreement without your complete approval.

In the course of our representation we will comply with the requirements of the Utah Rules of Professional Conduct.

**Conflicts of Interest**

Our office has informed you and will continue to inform you of any conflicts that arise between your interests and of any of our present or former clients. We also assume that if you become aware of potential conflicts of interest, you will immediately notify us. To the extent reasonably possible, we agree to avoid potential conflicts that may affect our representation of you.

**Termination**

You may terminate this engagement at will, and the firm reserves the right to terminate this engagement. In the event of termination, the firm will take reasonable steps to avoid reasonably foreseeable prejudice to your rights, including giving due notice to you and complying with all applicable rules of court and professional responsibility.

You have the right to terminate our representation of you at any time by providing us with written notice delivered to the address above. Upon receipt of such notice, we will promptly stop representing you and will formally withdraw as your attorneys. You shall pay any amounts due for work prior to receipt of the notice of termination, plus any fees or costs associated with transitioning this matter to another attorney.

You understand that, if you do not pay for our services as provided herein or abide by the terms of this retainer agreement, we may terminate our representation of you.

**Client Documents**

We will retain all documents you furnish to us in our client files for this matter. At the conclusion of this matter (or earlier if appropriate), it is your obligation to advise us as to which, if any, of the documents in our files you wish us to return to you. We may keep copies thereof to the extent we believe advisable for our records. We will retain any remaining documents in our files for a certain period of time and ultimately destroy them in accordance with our retention program then in effect.

**Advice to Seek Independent Counsel**

The terms of this agreement have significant legal consequences. Therefore, we are advising you to have this agreement reviewed by independent counsel of your choice before you sign it.

Initial here   *ej*   if you wish to consult or have consulted with independent counsel.

Initial here \_\_\_\_\_ if you do not desire to consult independent counsel.

**Miscellaneous**

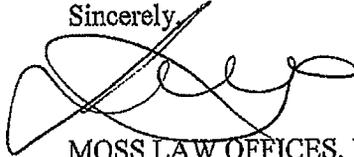
This retainer agreement shall be governed by the laws of the State of Utah.

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If the foregoing is agreeable, please execute below and return the original to our office and retain a copy for your records.

Thank you again for allowing us to represent you in this matter.

Sincerely,



MOSS LAW OFFICES, P.C.

Agreed to by:

Tooele County <sup>Commission</sup> ~~Board of Equalization~~

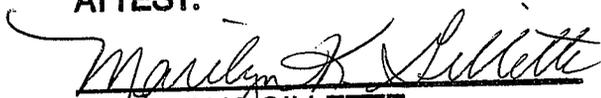
By: Colleen Johnson

Name: COLLEEN JOHNSON

Title: Commission Chair

Date: 6/21/11

ATTEST:



MARILYN K. GILLETTE  
TOOELE COUNTY CLERK

