

CA file



CITY OF SAN BRUNO
CITY ATTORNEY'S OFFICE

Marc L. Zafferano
City Attorney

January 25, 2012

Alan Titus, Esq.
Robb & Ross
591 Redwood Highway, Suite 2250
Mill Valley, CA 94941-6017

Re: Cost Recovery Agreement

Dear Mr. Titus:

Enclosed please find one original of the Cost Recovery Agreement between the City of San Bruno and Artichoke Joe's which has been executed by the City of San Bruno.

Per our email of January 20, 2012, please retain this original for your records after obtaining Mr. Sammut's signature. We have retained the second fully executed original for our records.

Very truly yours,

Vi Weber
Legal Secretary

for Marc L. Zafferano
City Attorney

Enclosure
c: City Manager
Police Chief

COST RECOVERY AGREEMENT

THIS COST RECOVERY AGREEMENT is entered into this 11th day of January, 2012, between the CITY OF SAN BRUNO, a California municipal corporation ("CITY") and Artichoke Joe's, a California corporation ("Artichoke Joe's"), together referred to as the "PARTIES."

RECITALS

- A. Artichoke Joe's owns and operates a card room at 659 Huntington Avenue ("Premises"), located within the City of San Bruno, County of San Mateo, State of California. The card room operates up to 38 gaming tables, 24 hours a day, 365 days per year.
- B. The City regulates the card room operation. The City licenses the card room and requires approval of anyone with a financial interest in the card room. In addition, the City requires that all employees hold work permits issued by the City. Issuance of licenses and work permits and administration of all the regulations is handled by the Police Department.
- C. The state also regulates the card room, licensing owners and key employees, and imposing regulations on the industry. The state requires pre-approval of any games and rates charged to customers. Currently, the state is in the process of developing regulations to impose minimum internal controls over card rooms.
- D. Over the years, gaming issues have become more complex and monitoring the operation of the card room and staying abreast of state law and regulation has become more and more time-consuming.
- E. In March 2011, the Bureau of Gambling Control filed a disciplinary action against Artichoke Joe's, alleging that a small number of customers were engaging in loansharking on the premises, that Artichoke Joe's should have been aware of these activities, and that Artichoke Joe's failed to taken reasonable steps to prevent this. In May 2011, Artichoke Joe's, without admitting guilt, stipulated to take certain actions, including to coordinate with the San Bruno Police Department to increase law enforcement efforts.

F. The San Bruno Police Department has suggested that it should hire a detective to handle issues regarding the card room. This detective will familiarize him or herself with all the technical, legal and regulatory issues involved with the card room and advise the Chief. The detective will also assist with licensing and work permitting of personnel and with investigation of incidents.

G. Because the detective will be dedicated to the handling of issues related to Artichoke Joe's, Artichoke Joe's has agreed to reimburse the City for the salary and benefits for a full-time police detective. NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the Parties agree as follows:

A G R E E M E N T

1. Term. This Agreement shall commence on February 1, 2012, and shall remain in full force and effect until January 31, 2016, provided, however, that the Agreement shall terminate if Artichoke Joe's ceases to operate in the City. The Agreement shall automatically renew for another two-year period on expiration of the original term, unless Artichoke Joe's or City gives notice before commencement of the fourth year of the original term of its intent to terminate the Agreement. The Agreement shall similarly renew every two years unless Artichoke Joe's or City gives notice of intent to terminate before commencement of the second year of the term immediately prior to the renewal.

2. Reimbursement to City. Cost Recovery. Artichoke Joe's agrees to reimburse CITY in an amount equivalent to CITY'S cost for the full costs of one (1) full time police detective (salary, benefits, and any actual annual adjustments to salary and benefits as specified in the current or any future Memorandum of Understanding in effect), which shall be paid to CITY in accordance with Section 4 of this Cost Recovery Agreement. The cost for the first year of this agreement is \$156,425.00 and shall be paid in lump sum within 30 days of invoice by the City.

3. Assistance in Training Detective. Artichoke Joe's shall, as requested, assist in familiarizing the police detective with the games played in the card room and with the various gaming issues that exist or that may arise.

4. Primary Point of Contact. The police detective will become the primary liaison for Artichoke Joe's with the Police Department for the conduct of business (non-emergency) affairs, including licensing and work permitting of employees.

5. Relationship of Parties.

a. The police detective as well as any police officers that may be assigned to patrol Artichoke Joe's are employees of the City. The deployment, control, supervision and duties of said detective and officers are within the sole control and discretion of the City.

b. Artichoke Joe's acknowledges that reimbursement to City for said staffing does not constitute employment of that detective and those officers and that no "special relationship," as that term may defined by law, is created or established with Artichoke Joe's, or their officers, employees, or sucesors, or with any third party as a result of this Agreement. Further, nothing in this Agreement is intended to or shall in any manner affect or limit the privileges or immunities or other protections accorded to City or its employees under federal law or state law or other law.

c. Nothing in this Agreement is intended to nor shall it shift to City any legal responsibilities, if any, that Artichoke Joe's may have to the public or to others entering or using the Premises.

4. Billing and Payment. Except for the first year, which shall be paid in accordance with Section 2a, City will invoice Artichoke Joe's and Artichoke Joe's shall pay City on a quarterly basis, payable in advance to the City by the first of the month of the subsequent quarter. Checks shall be made payable to the City of San Bruno and tendered to the City of San Bruno Finance Department, 567 El Camino Real, San Bruno, California 94066.

5. Successors in Interest. Artichoke Joe's acknowledges that this Cost Recovery Agreement is binding upon any and all successors in interest of Artichoke Joe's.

6. Notices. Any notices relating to this Agreement shall be given in writing. Unless otherwise provided herein, all notices required hereunder shall be given by U. S. registered or certified mail, or other form of mail which offers proof of mailing, postage pre-paid, and addressed to the party at the address below:

City: City Manager
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Telephone: (650) 616-7056
Facsimile: (650) 742-6515

With a copy to: City Attorney
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Telephone: (650) 616-7057
Facsimile: (650) 742-6515

Chief of Police
City of San Bruno
1177 Huntington Avenue
San Bruno, CA 94066
Telephone (650) 616-7100
Facsimile (650) 871-6734

Artichoke Joe's: Artichoke Joe's
Attn. Dennis Sammut
659 Huntington Avenue
San Bruno, CA 92660
Telephone: (650) 589-8812
Facsimile: (650) 872-0101

With a copy to: Alan Titus, Esq.
591 Redwood Highway, Suite 2250
Mill Valley, CA 94941
Telephone: (415) 332-3831
Facsimile: (415) 383-2074

Either party may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

7. Miscellaneous Terms and Provisions.

a. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

b. Amendment. This Agreement shall be amended only by a written instrument executed by each of the parties.

c. No Third-Party Beneficiary. There are no third party beneficiaries to this Agreement.

d. Captions and Headings. Captions and headings are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

e. Governing Law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement without reference to principles of conflict of laws. Venue for any action brought under this Agreement shall be in the Superior Court of San Mateo County, California.

f. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

g. No Agency Relationship. Neither party nor any of the party's agents, contractors or subcontractors are or shall be considered to be agents of the other in connection with the performance of any obligations under this Agreement.

h. Attorneys' Fees and Costs. Either party may bring a lawsuit to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party's reasonable costs and expense, including attorneys' fee.

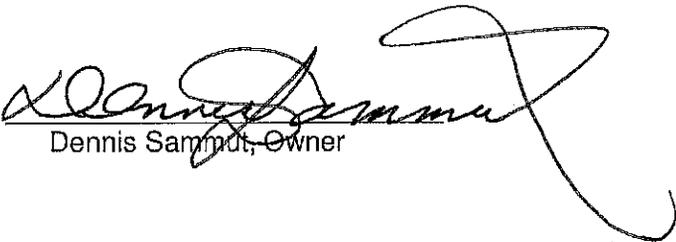
i. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

j. Waivers. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

8. Entire Agreement; Amendment. This writing constitutes the entire Agreement between the parties. No modifications shall be effective unless the modification is in writing and signed by all parties to this Agreement.

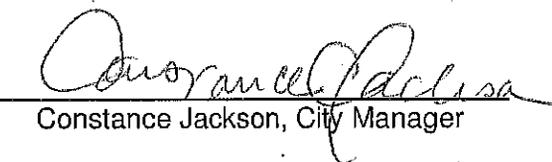
Dated: _____, 2012

Artichoke Joe's

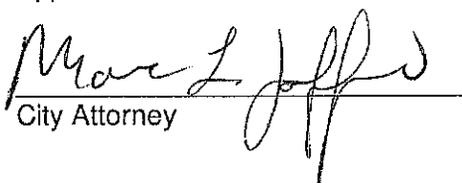
By: 
Dennis Sammut, Owner

Dated: Jan 11, 2012

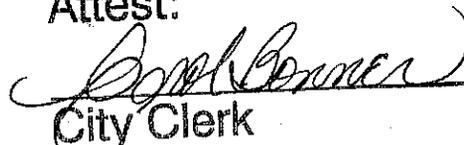
CITY OF SAN BRUNO

By: 
Constance Jackson, City Manager

Approved as to form:


City Attorney

Attest:


City Clerk