

RESOLUTION NO. _____

A RESOLUTION ALLOWING PROFEST, INC. TO SELL ALCOHOLIC BEVERAGES FOR THE DENTON ARTS & JAZZ FESTIVAL, FRIDAY, APRIL 27, THROUGH SUNDAY, APRIL 29, 2018, AT QUAKERTOWN PARK UPON CERTAIN CONDITIONS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE AN AGREEMENT IN CONFORMITY WITH THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council finds that it is in the public interest to select a vendor of alcoholic beverages at Denton Arts & Jazz Festival; and

WHEREAS, Profest, Inc. has requested that they be allowed to sell alcoholic beverages at this year's Denton Arts & Jazz Festival, April 27, through Sunday, April 29, 2018; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. Profest, Inc. shall be a participant allowed to sell alcoholic beverages at Denton Arts & Jazz Festival, April 27, through Sunday, April 29, 2018, at Quakertown Park, 321 E. McKinney St. upon the following conditions:

1. They shall be responsible for rental of any booth or space necessary.
2. They shall be responsible to obtain the temporary license and permit for selling alcoholic beverages approved by appropriate state agency.
3. They shall provide the security necessary for the sale of alcoholic beverages.
4. They shall provide general comprehensive liability insurance from a responsible carrier, with the City as an additional insured, in the amount of \$500,000.00.
5. They shall provide Liquor/Dram Shop Liability in the amount of \$250,000 per occurrence.
6. They agree to indemnify the City of Denton against any liability incident to the selling of alcoholic beverages at Denton Arts & Jazz Festival.

SECTION 2. The City Manager or his designee is authorized to execute an agreement in conformity with this Resolution, which shall be substantially in the form of the agreement attached hereto and made a part hereof by reference.

SECTION 3. This Resolution shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2018.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: 

CITY OF DENTON AGREEMENT WITH DENTON ARTS & JAZZ FESTIVAL

STATE OF TEXAS §

COUNTY OF DENTON §

This Agreement, made this _____ day of _____, 2018, by and between the City of Denton, a municipal corporation, hereinafter referred to as the "CITY" and PROFEST, INC.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

ARTICLE 1

GENERAL

The City grants to PROFEST, INC. the privilege to sell alcoholic beverages, subject to the exceptions and conditions hereinafter set forth, for the DENTON ARTS & JAZZ FESTIVAL on MAY 5, 2018, to be held at Quakertown Park. This privilege does not extend beyond the date(s) of the DENTON ARTS & JAZZ FESTIVAL set for the year 2018.

ARTICLE 2 TERMS AND CONDITIONS

PROFEST, INC. in order to exercise the privilege to sell alcoholic beverages, must perform the following:

- A. PROFEST, INC. shall be solely responsible for the rental and payment for any booth space necessary for the sale of alcoholic beverages at the DENTON ARTS & JAZZ FESTIVAL.
- B. PROFEST, INC. shall be solely responsible to obtain any temporary license and permit necessary for the selling of alcoholic beverages at the DENTON ARTS & JAZZ FESTIVAL.
- C. PROFEST, INC. shall be solely responsible for the obtaining and paying for any security necessary for their sale of alcoholic beverages at the DENTON ARTS & JAZZ FESTIVAL.
- D. PROFEST, INC.'s failure to do any of the above and to show proper proof of compliance shall waive their right to exercise the privilege of selling alcoholic beverages at the DENTON ARTS & JAZZ FESTIVAL.

ARTICLE 3 **LOCAL RULES AND REGULATION**

PROFEST, INC. agrees to abide by all municipal, county, state and federal laws, ordinances, rules and regulations and specifically, without limitation, to obtain all necessary and proper licenses, permits and authorizations, and to comply with the requirements of any duly authorized person acting in connection therewith. PROFEST, INC. shall pay all taxes, if any, of every nature and description arising out of or in any manner connected with the sale of alcoholic beverages.

PROFEST, INC. will exercise reasonable care and due diligence in their sale of alcoholic beverages at the DENTON ARTS & JAZZ FESTIVAL.

ARTICLE 4 **INDEMNITY AGREEMENT**

PROFEST, INC. shall indemnify and save and hold harmless the CITY and its officers, agents, and employees from and against any and all liability, claims, demands, losses, and expenses, including but not limited to, court costs and reasonable attorney fees incurred by the CITY, and including, without limitation, damages for bodily and personal injury, death and property damage, resulting from the negligent acts or omissions of PROFEST, INC. or its officers, shareholders, agents, or employees in the execution, operation, or performance of this Agreement.

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

ARTICLE 5 **INSURANCE**

During the performance of the Agreement, PROFEST, INC. shall maintain the following insurance with an insurance company licensed to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A- or above:

- A. Comprehensive General Liability Insurance with bodily injury limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.
- B. Liquor/Dram Shop Liability in the amount of \$250,000 per occurrence for any event occurring on City-owned property where alcohol will be provided or served.
- C. PROFEST, INC. shall furnish insurance certificates or insurance policies at the CITY'S request to evidence such coverages. The insurance policies shall name the CITY as an

additional insured on all such policies, and shall contain a provision that such insurance shall not be canceled or modified without written notice to the CITY and PROFEST, INC.. In such event, PROFEST, INC. shall, prior to the effective date of the change or cancellation, serve substitute policies furnishing the same coverage.

ARTICLE 6 **NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

PROFEST, INC.:	CITY OF DENTON:
Carol Short	City Manager
319 Pennsylvania Ave.	215 E. McKinney St.
Denton, Texas 76205	Denton, Texas 76201

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

ARTICLE 7 **ENTIRE AGREEMENT**

This Agreement, consisting of five (5) pages and 0 exhibits, constitutes the complete and final expression of the agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

ARTICLE 8 **SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 9 **DISCRIMINATION PROHIBITED**

In performing the services required hereunder, PROFEST, INC. shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

ARTICLE 10 **PERSONNEL**

PROFEST, INC. represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the CITY.

ARTICLE 11 **ASSIGNABILITY**

PROFEST, INC. shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the CITY.

ARTICLE 12 **MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

ARTICLE 13 **MISCELLANEOUS**

- A. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.
- B. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.

IN WITNESS HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager, and PROFEST, INC. has executed this Agreement through its duly authorized undersigned officer on this the _____ day of _____, 2018.

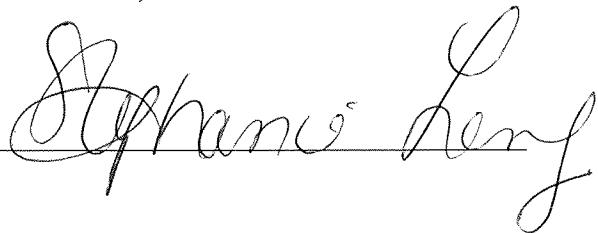
CITY OF DENTON, TEXAS

TODD HILEMAN,
CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: 

PROFEST, INC.

BY: _____
CAROL SHORT

WITNESS:

BY: _____