

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-21

A RESOLUTION APPROVING AND AGREEMENT WITH  
MODERN DISPLAY SERVICE INC. FOR DESIGN  
AND CONSTRUCTION OF A PARADE FLOAT

**WHEREAS**, the city council (the "*Council*") of the city of Cottonwood Heights ("*City*") met on 28 April 2015 to consider, among other things, authorizing City to engage Modern Display Service Inc. ("*Contractor*") to design and construct a parade float for City as specified in an agreement between Contractor and City (the "*Contract*"), a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of City's residents to authorize City to engage Contractor as proposed in the Contract;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of Cottonwood Heights that City is authorized to engage Contractor to provide the services specified in the Contract, and that City's mayor and recorder are authorized and directed to execute and deliver the Contract and any and all related payments and agreements on City's behalf; and be it

**FURTHER RESOLVED** by the city council of Cottonwood Heights that all actions heretofore taken by any of City's officers or employees in connection with the Contract are hereby ratified and approved.

This Resolution, assigned no. 2014-21, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 28<sup>th</sup> day of April 2015.



ATTEST:

Kory Solorio  
Kory Solorio, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By Kelvyn H. Cullimore, Jr.  
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Michael L. Shelton	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
J. Scott Bracken	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Michael J. Peterson	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Tee W. Tyler	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>

**DEPOSITED** in the office of the City Recorder this 28<sup>th</sup> day of April 2015.

**RECORDED** this \_\_\_ day of April 2015.

# Parade Float Agreement

**THIS AGREEMENT** (this "*Agreement*") is made effective \_\_ April 2015 between the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*Sponsor*"), and **MODERN DISPLAY SERVICE INC.**, a Utah corporation whose address is 424 South 700 East, Salt Lake City, UT 84102 ("*Builder*").

## WITNESSETH:

**IN CONSIDERATION** of the mutual covenants contained herein, the parties agree as follows:

1. **Services.** Builder agrees to design, build and decorate a float (the "*float*") on behalf of Sponsor for use in for various parades in Salt Lake County during summer 2015. The float's design and materials shall be mutually agreed and approved by both parties and shall be built to industry standards. The design will be as shown on the attached exhibit, with such modifications as Sponsor reasonably may direct, and will include various-sized (including large) bubbles continuously emanating from four electric bubble machines powered by a generator supplied by Sponsor. Sponsor will provide and maintain the motorized chassis vehicle for the float, and Builder makes no warranty concerning the suitability of such vehicle nor shall Builder have any liability for its proper function. The float will be 26 feet long, 8-10 feet wide and not higher than 14 feet.

2. **Completion of Construction.** The float shall be completed in time for parade participation by 4 June 2015. The float will be constructed in Salt Lake County, Utah at a location provided by Builder. Representatives of Sponsor may inspect the construction of the float from time to time upon reasonable prior notice to Builder. Builder shall give Sponsor advance notice of any changes of the location of the construction site.

3. **Independent Contractor.** Builder shall be deemed an independent contractor in the performance of this Agreement, and shall comply with all applicable laws regarding unemployment insurance, disability insurance, and workers' compensation insurance for its employees and agents. Builder shall have no authorization, express or implied, to contractually bind Sponsor nor to perform any acts as agent for Sponsor. The Contract Price (defined below) shall be the total amount payable hereunder by Sponsor.

4. **Operation.** The parties desire for the float to convey a positive image for both Sponsor and Builder as it appears in parades, and for the float be kept in good condition at all times during the 2015 parade season. To that end, Sponsor shall (a) operate the float in a safe, legally compliant manner; (b) keep tires inflated; (c) keep the gas tank properly full for every parade; and (d) regularly check and keep radiator and transmission fluid levels properly full. The float should be not be driven or towed at a speed exceeding 37 mph. Sponsor will operate the

float in the parades using operators furnished at Sponsor's expense and liability. Sponsor shall provide payment of entry fees for all parades that require such fees. Sponsor will observe the rules and regulations of the host parade regarding display and operation of the float, as well as all other applicable laws, ordinances or regulations. Sponsor also shall maintain liability insurance on the float, driver, and personnel while in its possession.

5. **Maintenance and Repair.** The float should be stored indoors and in a secure location when not in use. General maintenance such as repairing broken fringe, loose sheeting, and loose festooning is Sponsor's responsibility, provided that such work is not necessitated due to poor workmanship by Builder during original construction of the float. Builder immediately will correct any defects in workmanship occurring prior to September 15, 2015 at Builder's expense, and will provide a refurbishment kit from which Sponsor may make repair any minor aesthetic problems arising from normal wear and tear as the float is used.

6. **Contract Price.** Sponsor shall pay Builder the total sum of \$9,000 (the "*Contract Price*") in full compensation for the Services, as follows: (a) \$4,500 shall be payable upon signing of this Agreement by both parties, and (b) the balance of the Contract Price shall be due and payable upon full completion of the float. If Sponsor fails to pay any sum due hereunder within 30 days after its due date, interest shall accrue on such delinquent amount at the rate of 12% per annum.

7. **Term; Rights to Components.** The term for the performance of this Agreement is from the signing hereof by both parties until conclusion of the 2015 parade season in mid-September 2015. At the conclusion of the parade season, the props used on the float shall remain the property of Builder, and the parade float chassis shall remain the property of Sponsor. All designs and renderings concerning the float shall remain subject to Builder's copyright.

8. **Interpretation.** Utah law shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties. Both parties have had substantive input concerning the drafting of this Agreement. Consequently, this Agreement shall be construed and interpreted in a neutral manner without regard to whether one or the other of the parties was its "drafter."

9. **General Provisions.** This Agreement constitutes the entire understanding and agreement between and among the parties hereto with respect to the subject matter hereof and there are no oral or written agreements, understandings, restrictions, representations or warranties among the parties hereto other than those expressly set forth in this Agreement. This Agreement may not be amended, changed or modified except by written instrument signed by all parties hereto. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraph and section headings in this

Agreement are for convenience only and do not constitute a part of the provisions hereof. Time is the essence of this Agreement.

10. **Binding Effect; Assignment.** Each and every provision of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators and personal representatives. This Agreement may not be assigned or delegated without the written consent of the other party.

11. **Attorneys Fees.** If litigation is commenced concerning a breach of this Agreement, the prevailing party shall be entitled to their reasonable attorney’s fees and cost

**DATED** effective the date first-above written.

**SPONSOR:**

**ATTEST:**

**COTTONWOOD HEIGHTS**, a Utah municipality

By: \_\_\_\_\_  
**Kory Solorio**, Recorder

By: \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.**, Mayor

**BUILDER:**

**MODERN DISPLAY SERVICE INC.**,  
a Utah corporation

By: \_\_\_\_\_  
**Howard Wilson**, \_\_\_\_\_