

COTTONWOOD HEIGHTS

RESOLUTION No. 2024-30

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 16 April 2024 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 the city 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.

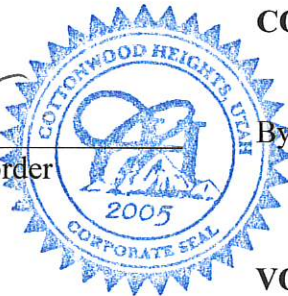
This Resolution, assigned no. 2024-30, shall take effect immediately upon passage.

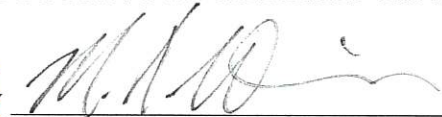
PASSED AND APPROVED effective 16 April 2024.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Paula Melgar, Recorder



By: 
Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Matt Holton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Suzanne Hyland	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Shawn E. Newell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Ellen Birrell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder on 16 April 2024.

RECORDED this 17 day of April 2024.

Amendment to Modern Display Services Agreement

THIS AMENDMENT (this "*Amendment*") is entered into effective 16 April 2024 between **MODERN DISPLAY SERVICE, INC.**, a Utah corporation ("*Provider*"), and the city of **COTTONWOOD HEIGHTS**, a Utah municipality ("*Client*"), and shall be deemed to amend the "Services Agreement and Letter of Engagement" (the "*Agreement*") that is attached to this Amendment.

Section 1. **Background.** Modern is in the business of constructing parade floats. Client desires to retain Modern, and Modern desires to be retained by Client, to construct a parade float (the "*Float*") for Client as specified in the Agreement for Client's use from 25 June 2024 through 15 September 2024 (the "*2024 parade season*") and from 25 June 2025 through 15 September 2025 (the "*2025 parade season*") (the 2024 parade season and the 2025 parade season are, collectively, the "*parade seasons*"). This Amendment modifies and amends the Agreement such that in the event of any conflict or inconsistency between the Agreement and this Amendment, this Amendment shall control.

Section 2. **Amendments.** By their signatures below, the parties mutually accept and enter into the Agreement, subject to the following modifications:

(a) Section 2.3 is omitted. The costs specified on Schedule 1 of the Agreement state the not-to-exceed costs to be paid by Client under the Agreement.

(b) Section 4.1 is amended to extend the termination date to September 15, 2025.

(c) Sections 4.2 and 4.3 are amended to provide that Client may terminate this Agreement due to non-funding of the expenditure that it represents, as provided in applicable Utah law. In that regard, Modern understands and agrees that funds are not presently available for performance of the Agreement beyond the end of Client's current fiscal year, which is 30 June 2024. Each party's obligation for performance of the Agreement beyond such date is contingent upon funds being budgeted and appropriated for Client's payment of sums due under the Agreement. If no such funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriation due to insufficient revenue, resulting in insufficient funds for the payments due or are about to become due under the Agreement, then the Agreement shall create no obligation on the parties as to such fiscal years, or any succeeding fiscal year, and all obligations thereunder shall terminate and become null and void on the first day of the fiscal year on which the funds were not budgeted or appropriated or in the event a reduction in appropriation on the last day before the reduction became effective (except as to those portions of payments herein then agreed upon for which funds were appropriated and budgeted). Such termination shall not be construed as a breach of or a default under this Agreement, and such termination shall be without penalty, additional payment, or other charge of any kind whatsoever to Modern, and no right of action or damage or relation shall accrue to the benefit of Modern as to any portion of the Agreement which may so terminate and become null and void.

(d) Sections 6.2, 6.3 and 6.4 are amended to include the following additional concepts and provisions:

The Float's design shall be mutually agreed and approved by both parties. The Float will be 30-35 feet

long, 8-10 feet wide, and not greater than 14 feet high. Client owns the Float, but Modern owns any props on the Float and the design of the Float.

A rendering of the design of the 2024 parade season Float is attached as an exhibit to the Agreement. For the 2025 parade season, Modern will make modifications to the prior year's Float sufficient to constitute at least a 25% visual difference as reasonably agreed by Client in consultation with Modern. Modern will provide as many design changes as necessary to complete the final design to Client's reasonable approval. Client acknowledges that minor design variations may be necessary so long as the overall design of the Float is maintained.

Modern will at its cost construct the entire Float in compliance with the Client-approved design for the subject parade season (the "*Approved Design*") at Modern's facility (the "*Shop*"). Except for the motorized chassis provided by Client, Modern will provide all necessary materials and labor (through the services of its team of artisans, including sculptors, painters, welders, and carpenters) necessary or advisable to construct the Float in accordance with the Approved Design and otherwise in a manner that will result in an attractive, durable product that will reflect well on Client and may be safely used by Client throughout the parade seasons. At no additional cost, Modern will make minor "touch-up" repairs and modifications to the Float made necessary by movement of the Float and will provide a repair kit with the finished Float to allow Client to make minor repairs to petal paper, festooning, fringe, glitter, etc.

Modern shall be fully responsible for the quality of the design, the materials and products used for the Float (excluding the chassis), and the construction techniques, all of which shall be in accordance with the Approved Design and of the highest quality and expertise.

Client's employees or agents may freely visit the Shop to verify progress of the Float at any time upon reasonable prior verbal or written notice to Modern. Modern shall have the completed Float ready for Client to pick up from Client's storage facility no later than the June 25th immediately prior to each of the parade seasons. If the Float is not completed so that it is unable to participate in a parade on a fully-functional basis at any time during a parade season, then Modern shall pay Client the sum of \$300 for each parade so missed. The parties agree that such liquidated damages are a fair and reasonable remedy for Client due to the difficulty or impossibility of assessing Client's actual damages if the Float cannot participate in a parade on a fully functional and 100% operational basis due to Modern's fault.

Modern warrants that the Float (including all of its construction and props) will be and remain in good, attractive, useable condition throughout each of the parade seasons. Any problems, nonconformity, damages, etc. to or involving the Float (excluding those caused by Client's own negligence or intentional misconduct) shall be repaired by Contractor at its cost within seven business days following City's notice to Contractor.

(e) Section 9 is amended to provide that Client's indemnities, etc., under Section 9 shall not be deemed to waive or modify any rights, defenses, protections or limits of liability of Client under the "Utah Governmental Immunity Act" (UTAH CODE ANN. § 63G-7-101, *et seq.*).

(f) Section 11.4 is amended to provide the following as Client's address for notices:

Cottonwood Heights

Attn. City Manager
2277 East Bengal Blvd.
Cottonwood Heights, UT 84121

Section 3. **No Other Modifications.** Except as specifically amended and modified by this Amendment, the Agreement shall be deemed unmodified and in full force and effect between the parties.

DATED effective the date first-above written.

MODERN:

MODERN DISPLAY SERVICE, INC.,
a Utah corporation

By: Monet Young

Its: Director Commercial Decor

CLIENT:

COTTONWOOD HEIGHTS, a Utah municipality

ATTEST:

By: Paula Melgar
Paula Melgar, Recorder



By: Michael T. Weichers
Michael T. Weichers, Mayor

SERVICES AGREEMENT AND LETTER OF ENGAGEMENT

DATE April 2, 2024

CLIENT NAME: City of Cottonwood Heights

DESCRIPTION OF WORK: Parade Float Build 2024

GENERAL SERVICE PROVIDER: Modern Display Service, Inc.
3370 West 500 South
Salt Lake City, Utah 84104

KEY CONTACT PERSONS:

Modern Representative: Name: Monet Young
Cell: 801-450-6632
E-mail: Monet@Moderndisplay.com

Modern Representative: Name: Dan Popek
Cell: 801-391-4298
E-mail: DPopek@Moderndisplay.com

Client Representative: Name: Ann Eatchel
Phone:
E-mail: aeatchel@ch.utah.gov



SERVICES AGREEMENT AND LETTER OF ENGAGEMENT

SCOPE OF WORK Parade Float Build 2024

This Services Agreement ("Agreement"), April 2, 2024 made by and between Modern Display Service, Inc., ("Modern"), and Cottonwood Heights ("CLIENT").

Modern is in the business of providing Seasonal Floats, including but not limited to; design, build out, supply of product, installation, parade services, dismantling and storage of Floats.

CLIENT desires to enter into an agreement with Modern to provide a Parade Float for 2 contract years

SERVICES AGREEMENT

1. ENGAGEMENT

1.1. CLIENT engages Modern, and Modern accepts the engagement, upon the terms and conditions set forth in this Agreement, to perform the work described in Section 6. The Work shall include all labor, materials, equipment and services necessary for Modern to fulfill its obligations.

2. PRICING

2.1. Pricing for services provided to CLIENT is established in **Schedule 1** which is attached to this Agreement by reference.

2.2. All other pricing not specifically set forth in the attached schedule, will be quoted and provided on an "as agreed upon" basis.

2.3. Modern reserves the right to reasonably change or modify pricing to CLIENT during the term of this Agreement.

3. PAYMENT

3.1. A deposit equal to 50% of the ESTIMATED ANNUAL BILLING is due and payable to Modern upon presentation of an invoice and prior to the first day of production.

3.2. Any remaining amount due Modern by CLIENT for services is due and payable upon presentation of an invoice upon completion of float, and in no case more than 30 days from date of invoice.

4. TERM, TERMINATION, CANCELLATION

4.1. This Agreement will commence on the date set forth above and expire upon the latter of completion of the Work and delivery of any Work Product according to this Agreement, or September 1, 2025, unless earlier terminated in accordance with this Article.

4.2. **Termination.** CLIENT may terminate this Agreement, or any part thereof, for cause in the event of any default by Modern, defined as failure to deliver work conforming to the requirements of this Agreement, upon no less than 30 days written notice. CLIENT shall provide Modern reasonable opportunity to remedy any alleged breach in accordance with Section 6 of this Agreement. In the event of termination for cause, CLIENT shall pay Modern for all work performed and accepted prior to termination, and any work in progress of which CLIENT, at its sole discretion, chooses to become the owner.

SERVICES AGREEMENT AND LETTER OF ENGAGEMENT

Modern may terminate this Agreement upon no less than 30 days written notice to CLIENT prior to the termination date of this Agreement should CLIENT fail to compensate Modern in a timely manner for services rendered in the course of performing The Work. Modern shall provide CLIENT reasonable opportunity to remedy any alleged breach in accordance with Section 6 of this Agreement.

4.3. Cancellation. Should CLIENT cancel the float, prior to the first day of production, as a result of a national or state emergency, natural disaster, act of war, terrorism, damage or destruction to the host facility, invocation of law, strike or other extreme circumstance beyond CLIENT's control, Modern shall be entitled to recover its actual costs incurred as liquidated damages.

Should CLIENT, because of non-emergency business, political, scheduling or economic factors, cancel the float prior to the first day of completion, Modern shall be entitled to compensation for cancellation based on the schedule below:

- Less than 90 days prior to completion – 25% of estimated total Annual billing
- Less than 46 days prior to completion – 50% of estimated total Annual billing
- Less than 31 days prior to completion – 75% of estimated total Annual billing
- Less than 11 days prior to completion – 90% of estimated total Annual billing
- Less than 1 day prior to completion – 100% of estimated total Annual billing

6. RELATIONSHIP OF THE PARTIES; PERFORMANCE OF THE WORK.

6.1. Status as an Independent Contractor. This Agreement establishes an independent contractor relationship between CLIENT and Modern. Modern will provide the services and materials, and will receive compensation as specified in Section 4 above. Nothing herein shall be construed to establish any partnership, joint venture, or employment relationship between the parties.

6.2. Specifics of the Work

- 6.2.a** All designs, renderings, samples and models shall remain the sole property of Modern. All props, decorations and other items associated with the construction of the parade float, with the exception of items specifically provided by the CLIENT, shall remain the property of Modern.
- 6.2.b** Modern will construct the parade float on a float chassis supplied and owned by CLIENT. CLIENT will be responsible for maintaining all the mechanical elements of the parade float, including but not limited to; fuel, oil, mechanical fluids, coolant, tires, battery, engine etc. Should CLIENT require Modern to assist them in any repairs or maintenance of the float, this will be accomplished as a separate fee item over and above the amount of this Agreement.
- 6.2.c** CLIENT will be responsible for transporting the float chassis to the Modern Expo Warehouse for Construction and picked up within a reasonable amount of time following completion. CLIENT will also be responsible for transporting the float to and from the parade site and conducting the float through parade(s).

6.3. Method of Performing the Work. Modern shall determine the method, details, and means of performing the Work. The design and construction of a parade float is a creative process and imperfect science. As such, there are variables that may affect the final product. Variables such as, dimensions of the float chassis, lines of sight for the driver, and design variables may result in alterations to the approved design. CLIENT hereby allows Modern to make minor design modifications or changes and will rely on Modern's expertise and experience in making such modifications as necessary.

6.4. Changes in the Work. Changes in the Work may be accomplished after execution of this Agreement and without invalidating this Agreement by mutual agreement of the parties.

SERVICES AGREEMENT AND LETTER OF ENGAGEMENT

6.5. Sufficient Time to Perform the Work. CLIENT will insure Modern has sufficient time in which to reasonably perform the Work. This includes access to the float chassis with sufficient time in advance on the completion date. Failure to provide sufficient time to perform the work may result in increased costs to Modern and may result in a surcharge to CLIENT.

7. CONFIDENTIALITY.

7.1. Obligation Not to Disclose Confidential Information. Modern shall maintain in strict confidence, and shall use and disclose only as authorized by CLIENT, all Confidential Information (as defined herein) that Modern receives in connection with the performance of the Work. Modern shall require Modern's personnel and any sub-contractors to whom it must disclose Confidential Information to agree to do likewise.

7.2. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" means: (a) any information relating to the contracts, agreements, business plans, budgets, or results of operations, or any other financial information of CLIENT (other than this Agreement), to the extent such information has not been made available to the public by CLIENT; and (b) any other trade secret, proprietary information or information marked or noted to be confidential by CLIENT at the time of disclosure.

8. INSURANCE.

8.1. Without limiting any other obligation of either party under this Agreement, Modern shall purchase and maintain in force and effect for the entire period that this Agreement (and any extensions thereof), and for six (6) months after the expiration of the term of this Agreement, insurance coverage containing the terms and conditions described in, and with limits of not less than those standard in its industry and sufficient for Work outlined in this Agreement. Modern shall also cause all sub-contractors and all other parties with which Modern contracts in connection with this Agreement to provide and maintain insurance coverage necessary and customary for such contracts.

9. INDEMNIFICATION

9.1. Indemnity. Each party will indemnify, defend and hold harmless, the other, its parent, subsidiary, and affiliated corporations and their respective directors, officers, employees, agents, successors and assigns, from and against any and all claims, demands, actions and causes of action arising out of or related to this Agreement, provided however, that the Indemnifying Party shall not hold the Indemnified Party harmless from the Indemnified Party's own negligence, gross negligence, willful misconduct or violation of law.

10. COMPLIANCE WITH LAWS.

10.1. Licenses and Permits. Modern shall comply with all applicable laws and governmental rules and regulations in performing the Work. Modern shall bear sole responsibility to obtain and maintain all necessary and appropriate licenses, permits and approvals, and give all required governmental notices necessary for proper performance of the Work.

11. GENERAL PROVISIONS.

11.1. Governing Law, Venue and Jurisdiction. This Agreement shall be construed in accordance with, and governed by the substantive laws of, the State of Utah, without reference to principles governing choice or conflict of laws. The parties agree that any actions brought to enforce this Agreement shall be in the federal and state courts of the State of Utah, and hereby consent to the jurisdiction of such courts.

SERVICES AGREEMENT AND LETTER OF ENGAGEMENT

11.2. Waiver. The failure of either party at any time to require performance by the other party of any one or more of the provisions of this Agreement shall not affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any term or provision of this Agreement be interpreted or held to be a waiver of any succeeding breach of such term or provision or as a waiver of the term or provision itself.

11.3. Entire Agreement; Amendment. This Agreement, including the cover page and the Schedules attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein, and there are no covenants, terms or conditions, express or implied, other than as set forth or referred to herein. This Agreement supersedes all prior agreements between the parties hereto relating to the subject matter hereof. The captions used herein are for ease of reference only and shall not define or limit the provisions hereof. No representation, oral or written, modifying or contradicting the terms of this Agreement have been made by any part except as contained herein. This Agreement may not be amended or modified except by written agreement of the parties.

11.4. Notices. All notices, requests and approvals hereunder shall be in writing, addressed to the parties at the addresses set forth below, shall reference the Contract Name City of Cottonwood Heights Parade Float Build 2024 and shall be given: (a) by hand or courier service, (b) by certified first class mail, postage prepaid, return receipt requested, or (c) by fax, confirmed by the method described in clause (b). Any such notice shall be deemed to have been duly given (x) on the day of actual delivery, if given by hand or by courier, (y) three (3) business days after deposit in the U.S. mail, or (z) upon receipt of fax, if confirmed by mail. A business day is a day that banks are open for business in Salt Lake City, Utah. A party may change its address for notices by notice given pursuant to this Section.

If to Modern: Spencer Vriens
 3370 West 500 South
 Salt Lake City, UT 84104
 801-355-7427

If to CLIENT:

11.6. Good Faith Effort to Resolve Disputes. Modern and CLIENT shall use good faith efforts to agree upon any matter that requires their mutual consent pursuant to the terms of this Agreement through negotiation, and in the event such claim, dispute or other matter is not resolved through negotiation, by mediation. If a controversy or claim should arise, each party's authorized representatives shall meet at least once to attempt to resolve the matter. Either authorized representative may request the other to meet within five (5) business days, at a mutually agreed time and place.

11.7 Attorney's Fees. In the event suit or action is brought, or an arbitration proceeding is initiated, to enforce or interpret any of the provisions of this Agreement, or that arise out of or relate to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in connection therewith, as determined by a qualified arbitrator(s) or by a court or courts of competent jurisdiction.

SERVICES AGREEMENT AND LETTER OF ENGAGEMENT

11.8 Consequences of Termination. All provisions of this Agreement, which in order to give effect to their meaning, need to survive its termination or expiration shall remain in full force and effect after such termination or expiration.

In Witness Whereof, the parties have executed this Agreement as of the day and year first written above.

“Modern”

Modern Display Service, Inc.

By : Monet Young

Monet Young
Director Commercial Décor

Date: 4/2/2024

“CLIENT”

CLIENT

By : _____

NAME: _____

POSITION: _____

Date: _____

SERVICES AGREEMENT AND LETTER OF ENGAGEMENT

SCHEDULE 1

Parade Float Build 2024	\$12,000
Storage 2024	\$ 1,200
Refurbishment 2025	\$ 6,000
Storage 2025	\$ 1,200

Please fill out the information below:

Date of First Parade: _____

How many Royalty/People on the float: _____

Primary Contact for season

Name: _____

Phone: _____

Email: _____



Invoice

3370 W 500 S
Salt Lake City, UT 84104
(801) 355-7427

Date: 3/28/2024
Invoice #: 967121
Terms: Net 30
Due Date: 4/27/2024
PO #:
Sales Rep: Commercial Deco Sales
Shipping Method: No Shipping
Ship Date: 3/28/2024
Tracking #:
Memo:

Bill To
Cottonwood Heights City
1265 E Fort Union Blvd
Suite 250
Cottonwood Heights UT 84047

Ship To
Cottonwood Heights City
1265 E Fort Union Blvd
Suite 250
Cottonwood Heights UT 84047

Item	Description	Quantity	Units	Rate	Amount	SKU
Commercial Deco Misc Rental	Cottonwood Heights Custom Float build 2024 DEPOSIT	1		6,000.00	6,000.00	CDM
	Float Storage	1		1,200.00	1,200.00	CDR

Subtotal 7,200.00
Shipping Cost (No Shipping) 0.00
Total \$7,200.00

Return/Exchange Policy:
SEASONAL SALE & CLEARANCE ITEMS ARE NON-RETURNABLE!
All regularly priced "SEASONAL" items are returnable up to 5 business days before the Holiday occurs!
All regularly priced "non-seasonal" items are returnable within 30 days of purchase if accompanied with a receipt!
All normal warranted items sold at more than 40% off do not carry a warranty.

*Certain restrictions may apply to this return policy!

Modern Display Service, Inc.

Please Enter Your Credit Card Information

Type: Discover Master Card VISA American Express ...
Credit Card #: _____
Expiration Date: _____ Month _____ Year
Signature: _____

Remittance Slip

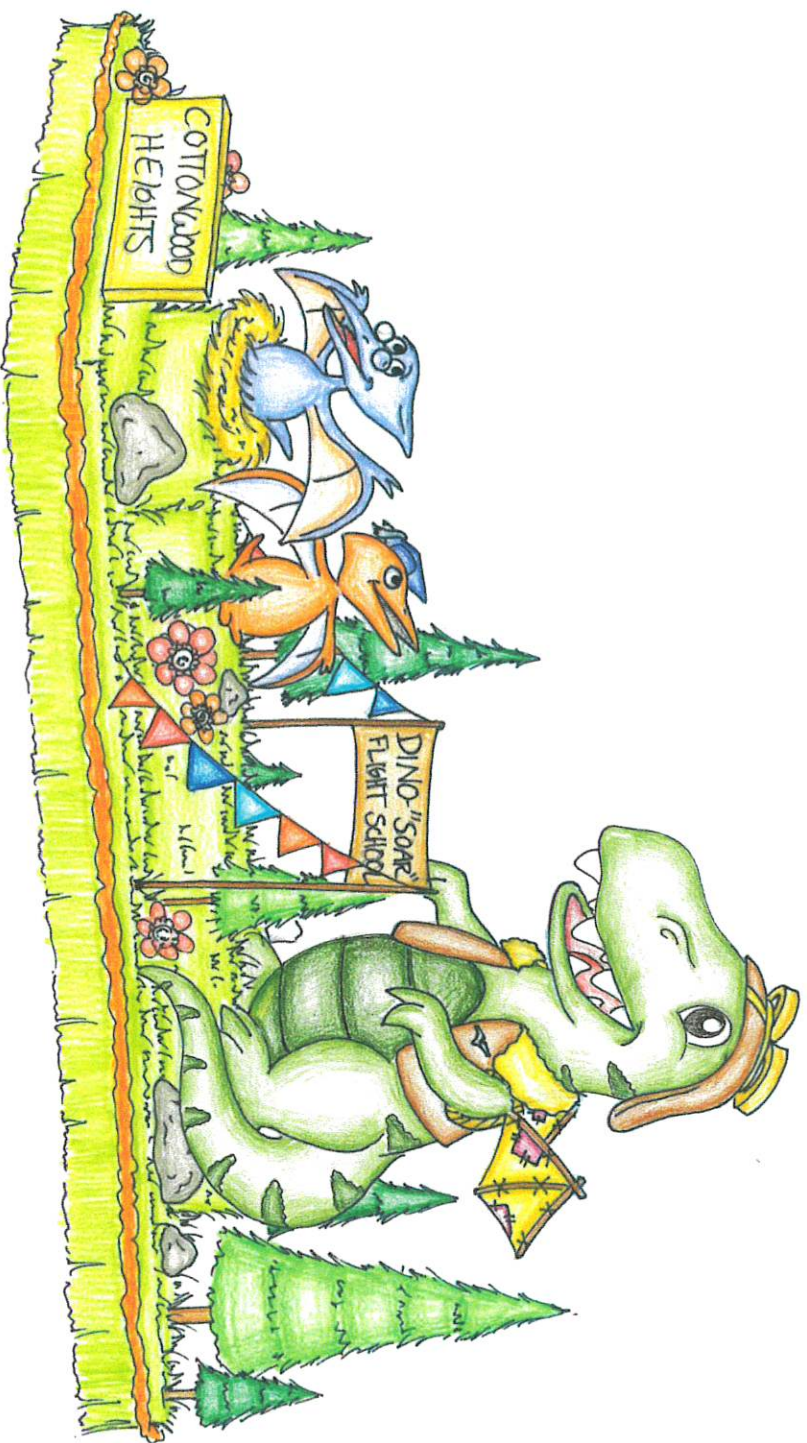
Customer 7741-8 Cottonwood Hgts ...
Invoice # 967121
Amount Due \$7,200.00
Amount Paid _____

Make Checks Payable To

Modern Display
3370 W 500 S



967121



Dream Big, Lift All!

Together, we can accomplish more when we support and uplift each other. By helping our neighbors, we can create a community where everyone thrives and reaches greater heights. Let's continue to spread kindness, encouragement, and positivity, making our world a better place for all.

Days of 47 theme: Stout Pioneers Hearts – Lift Others!