

DRAFT 7.19.16
“Memorandum of Understanding (MOU)
Between Texas State Tubes LLC and RKY Ltd.
And the Caldwell County Commissioners Court

WHEREAS, a three-mile stretch of the San Marcos River, east of the city of San Marcos, is visited by thousands of tubers and recreational users each year, and the number of visitors to the river, especially for tubing, has increased substantially as the region has grown in population and has become an increasingly popular tourist destination.

WHEREAS, this particular section of the river, that forms the border between Caldwell and Guadalupe Counties, lies within the unincorporated areas of the two counties and the county governments do not have sufficient resources to consistently deploy law enforcement officers along the river to enforce existing state laws related to public intoxication, underage drinking, trespassing, indecency, littering, and possession of glass or Styrofoam.

WHEREAS an increased level of funding to the county to provide additional levels of law enforcement in the area is essential to successfully addressing the problems related to the high seasonal levels of recreational users of the river.

WHEREAS, the deployment of appropriate levels of coordinated law enforcement and emergency services personnel is best overseen by the Commissioners Court, or the County Sheriff or other designee of the Court, TST/DFC contractually commit to the Commissioners Court to provide funding assistance directly to Caldwell County to make additional resources available to the county through the Commissioners Court to assist in providing for appropriate levels of law enforcement deployment, to assist with funding the regional coordination needed to provide for law enforcement and emergency services, and to help create a more safe, law-abiding and respectful environment for residents and recreational users.

WHEREAS, TST/DFC have also committed to and are undertaking efforts to better educate customers on alcohol related violations, underage drinking and trespassing laws, and are implementing changes in business policies and operational protocols to more proactively address water quality and litter problems through increased litter abatement efforts, ongoing professional river cleanup services, and periodic water quality testing in order to maintain the river's beauty and enhance the river experience for all Texans.

WHEREAS, this MOU lays out a coordinated approach between TST/DFC and the Commissioners Court designed to provide funding assistance to the county to enact and oversee management efficiencies and operational accountability for law enforcement deployment and operations, and to provide contractual assurances from the outfitters to the Commissioners Court by memorializing key commitments made in the MOU dated March 13, 2015 (Outfitter MOU), which was voluntarily entered into to allow TST/DFC to collectively help fund and undertake third party contracts and cooperative agreements to assist in providing a more enhanced law enforcement presence along the river, to encourage litter abatement and lawful behavior, and to provide for ongoing, systematic and coordinated river clean up efforts.

WHEREAS, this MOU between the Commissioners Court and TST/DFC (County MOU) addresses key elements of the comprehensive plan laid out in the Outfitter MOU between TST/DFC, it will: (1) provide funds voluntarily committed by the outfitters directly to the county for enhanced funding for an increased level of law enforcement deployment and any related training and regional coordination needed to effectively respond to problems in the area; (2) contractually require the outfitters to continue the Pristine Rivers dive cleanup program established in the Outfitter MOU, and to continue outfitter top water cleanups; and (3) memorialize commitments made by the outfitters to continue to work to increase environmental and safety awareness programs targeted at customers and staff and provide accountability regarding commitments on business policy and operational changes.

Contractual Commitments of Memorandum of Understanding (MOU)

- A. Through the MOU dated March 13, 2015, TST and DFC adopted tangible, measurable goals, and pledged the ongoing annual commitment of financial and administrative resources to the plans and activities described in the MOU. This MOU with the county reaffirms key voluntary financial commitments made by the outfitters and provides specific assurances to Caldwell County Commissioners Court, affected river residents, and members of the Texas Legislature on efforts to ensure: enforcement of responsible enjoyment of the river; appropriate coordination and oversight of law enforcement by the county; greater accountability to residents and landowners in the area and higher levels of regional planning and coordination; and greater cleanup and environmental protection efforts and activities.
- B. TST/DFC commit to keeping the segment of river where they operate cleaner; providing ongoing funding assistance to the Commissioners Court for law enforcement deployment in the area; responding quickly and effectively to property owners' concerns; working cooperatively with the county in efforts it undertakes to find creative and strategic solutions needed to reestablish an ongoing and effective law enforcement presence to ensure appropriate respect for and enforcement of laws relating to recreational use of the river.
- C. To achieve these goals, TST and DFC will annually voluntarily commit certain designated funds for the Commissioners Court to coordinate, oversee, manage, and deploy law enforcement in the specified area in the amount of \$40,000.00 to be provided annually by each outfitter, for a total annual level of funding assistance to the county of \$80,000.00. All funding assistance committed by the outfitters in this MOU shall be used exclusively for the purposes identified in this MOU, with a minimum of \$70,000.00 each year designated for use by the county for deployment of law enforcement officers in the area along the river. Any funds designated as restricted for law enforcement deployment that are not expended by the county within a fiscal year shall be held over for that same purpose for the following year, and the unexpended balance will be applied by the county to offset funding assistance levels expected of the outfitters in that following year. The county may use the additional \$10,000.00 to assist with funding the regional coordination of law enforcement and emergency services.
- D. In addition to providing funding for this effort, TST and DFC agree to provide information to the Commissioners Court as needed, and the Commissioners Court agrees to also provide information to the outfitters as needed or requested. Information will be cooperatively

compiled and made available to the public by the county, to document: (1) all funds voluntarily committed to the county by the outfitters; (2) all funds distributed or spent by the commissioners court, and all expenses undertaken by the county for law enforcement deployment and for coordination, including staffing levels by date for law enforcement; (3) all strategic efforts and coordinated outreach with other local governments undertaken by the county; (4) all relevant results and outcomes of expenditures and programmatic efforts set out in this MOU, particularly results from the enhanced presence of law enforcement in the area and regional coordination efforts, and (5) contract river cleanup efforts, outfitter cleanup efforts, and communication, awareness, enforcement activities undertaken by the outfitters and by the county.

- E. All funds committed by the outfitters and allocated by the Commissioners Court to be expended by the county shall be reviewed and verified, and may be audited at the request of either party to this MOU, and the county will provide a full report annually on law enforcement deployment and expenses, and on related call volumes for complaint calls, law violations, and emergency medical and rescue services related to outfitter assisted recreational river activity in the area. The county will report on all coordination efforts related to law enforcement and emergency services deployment and on all programs and expenses envisioned in this MOU. Outfitters commit to revise existing deep water dive cleanup contract with Pristine Rivers to contractually require all invoices and work documentation from Pristine Rivers be submitted to the Commissioners Court, with confirmation of payments made by the outfitters, and documentation of work performed by Pristine Rivers.
- F. At all times, TST, DFC, and the county will have shared, uniform and equal access to all information, data, reports, and original records for all activities undertaken through this MOU, including any third-party contracts or arrangements. Information relating to law enforcement issues, emergency calls or issues, or tickets issued by law enforcement shall be collected, maintained by the county, and all records made accessible to the parties to this MOU. TST/DFC and the county pledge to keep accurate records; be accountable for and provide access to necessary records; and fully disclose to each other and the public the efforts undertaken through this MOU.
- G. This contractual MOU, or its successor, will renew automatically on an annual basis and will provide for the specified funding level unless renegotiated by the parties. TST and DFC will commit to fund and engage collectively with third parties as necessary to undertake the activities set out in this MOU, and to voluntarily make funds available to the Commissioners Court to: (1) assist the county by providing a reliable and committed funding stream to ensure more functional and appropriate levels of law enforcement deployment to provide for law enforcement needs in the area; and (2) allow the county to manage and deploy law enforcement officers in a coordinated manner that maximizes the limited resources available and provides appropriate management oversight from the county.
- H. TST and DFC will provide funding assistance for specific programs and activities at budget levels agreed to by TST/DFC and the Commissioners Court in this MOU, and will contractually execute any necessary related contracts to provide clear assurances and enforcement mechanisms for delivery and performance compliance for the provisions of the MOU. The Commissioners Court will undertake and oversee programs and activities

specified in this MOU to direct and coordinate efforts to establish and ensure an ongoing and effective law enforcement presence in the area.

I. Specific Programs Funded Annually by TST and DFC through MOU for Cleanup, Law Enforcement, and Communication and Education

1. Riverside Cleanup and Underwater Cleanup Program

Perform underwater river cleanups (a) weekly during the peak period of April 1-September 15, and (b) monthly during the non-peak period of November 1-March 31. Cleanup protocols have been established, including schedules, reporting of collected materials, litter disposal, and report summaries. Third-party contractors will be responsible to the operators for the results of their efforts. In addition, TST and DFC have adopted new daily riverbank cleanup protocols and maintenance schedules that provide for a minimum of four people a day, five days a week performing top-water riverbank cleanup. Pristine Rivers contract will continue at current funding level, and will be renewed annually by outfitters.

- **Underwater Cleanup:** Pristine Texas Rivers Inc. under contract with outfitters to perform underwater cleanup. Note: This company provides third-party cleanup services for other regional water-oriented recreation districts, specifically, the WORD district (New Braunfels), Lions Club (San Marcos), and all outfitters in Comal and Guadalupe counties.
- **Riverside Cleanup:** This cleanup will be accomplished via employees of TST and DFC, who are on the river daily.
- **Regular water quality testing,** more frequently after major events on the river.

2. Commitments to Provide Increased Law Enforcement and Community Response

This MOU provides funding assistance directly to the county to increase the law enforcement presence along the river and to provide additional support for the community immediately adjacent to and around the river. This County MOU specifies desired security levels to be in effect for the period April 1-September 15, 2015. All security shifts are from 2:00 p.m.-8:00 p.m., with additional staffing for the three major summer holidays (Memorial Day, July 4th, and Labor Day).

- The commitment of funds from the outfitters for the county to provide law enforcement in the area requires that all law enforcement deployed by the county must be Certified Peace Officers, and they must be in uniform with patrol cars and expected to exercise their authority under the Texas Penal Code.

Enhanced Law Enforcement Deployment Plan

Would Allow for Following Law Enforcement Staffing Plan by Date with Projected Cost:

Proposed deployment for law enforcement based on funding assistance budget:

- Two (2) officers on the river every Friday during May through August
- Ten (10) officers every Saturday May through August
- Six (6) officers on each Sunday May through August
- Three day holiday weekends to have two (2) officers on Friday (unless Friday is the holiday), ten (10) officers on Saturday, ten (10) officers on Sunday, and six (6) on Monday
- September and April to have six (6) officers each Saturday

J. Summary of Outfitter Commitments to Undertake Operational Changes

Outfitters will continue educational and cleanup efforts to provide environmental and safety awareness programs, and will provide educational information at their business locations about applicable laws relating to littering, trespassing, drinking and noise restrictions.

K. Total Funds Allocated for Cleanup, Security, and Communication Through MOU

Each of our companies agrees to provide funds in equal amounts sufficient to fund the total budget for the program goals expressed in this MOU, and thereby cover all amounts needed for the contracts associated with the MOU.

County MOU Budget Amounts for Law Enforcement & River Cleanup

\$ 42,984	Underwater Dive Cleanup by Texas Pristine Rivers, Inc. Committed Amount same as proposed in MOU. Contract Signed and Activities Initiated.
\$ 80,000	Committed Funds for Law Enforcement Funding amounts made available provide significant increases to the County to coordinate, contract for, and fund more appropriate levels of law enforcement ensuring increased Law Enforcement presence.
\$ 122,984	Total annual outfitter expenditures under County MOU

This MOU is a legally binding contract between TST/DFC and Caldwell County Commissioners Court to share in the commitment to provide the financing and oversight necessary to support the activities outlined herein. TST and DFC each agree to commit a \$70,000 to the county annually to a dedicated account for specified purposes. TST and DFC have agreed to that same financial commitment each year thereafter, for the purpose of establishing an ongoing, structured program to efficiently and cost-effectively meet the specific needs and the commitments expressed in this MOU. Through the execution of this MOU, the third-party contracts and coordinated law enforcement deployment will be executed as expressed and provided for in this MOU. All records, data, and information on activities undertaken through this MOU will be made available to all parties to the MOU in a transparent manner, in the spirit of cooperation and accountability. Both companies enter into this MOU voluntarily, with a commitment to working effectively to protect the natural beauty and ecological health of the

river, to enhance and better protect the health, safety, welfare of the residents and landowners in the area, and to help provide a safe and fun recreational experience for all those seeking to enjoy the river.

Dispute Resolution and Enforcement

TST, DFC and Caldwell County agree that any material breaches will be first resolved through a face-to-face meeting or mediation, and then mandatory binding arbitration pursuant to the Texas Arbitration Act.

TST, DFC and Caldwell County agree that the promises and commitments in the MOU are contractual in nature, and enforceable by the non-breaching party. In the event of material default by either party after an opportunity to cure (other than going out of business), the non-breaching party can invoke binding arbitration pursuant to the Texas Arbitration Act, and seek specific performance, damages and attorney's fees for any breach of the MOU. If either party sells or transfers ownership of TST or DFC, the terms of the MOU and this addendum attach as a part of the sale or transfer of ownership.

This agreement contains the entire agreement of the parties, except to the extent other written agreements are specifically incorporated by reference. It represents the entire agreement of the parties with respect to all matters addressed, and supercedes all prior discussions and writings with respect thereto.

IN WITNESS THEREOF, the parties have executed this agreement on the ____ day of July 2016.

Texas State Tubes LLC

RKY Ltd. (Don's Fish Camp)

Date: _____

Date: _____

Caldwell County Judge

Date: _____

Other Issues for Discussion:

A) List of Land Owners allowing use and access to private property for law enforcement:

1. Jay Cody (he is the foreman of property but insures land owners are for allowing security on the property)
2. Max Shleder
3. Tom Goynes
4. Terry Ashford
5. Alan Cummins
6. Don Nelle
7. Rocky Ramona

B) Mike Lang has been contact on coordinating law enforcement deployment.

C) Other issues to discuss and address:

- Outfitter payment schedule
- Outfitter security contact for law enforcement
- Other?

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