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**Memorandum of Understanding (MOU)  
Between Texas State Tubes LLC and RKY Ltd.  
Relating to SB 234 (Zaffirini)**

This agreement is entered into by Texas State Tubes LLC and RKY Ltd. (Don's Fish Camp) on February 6, 2015, to create and implement a collaborative, comprehensive plan to:

- Enhance the environmental quality and cleanliness of the three-mile segment of the San Marcos river between Cummings Dam and Skull Bridge, bordered by Caldwell and Guadalupe counties;
- Increase the safety and security of area residents and individuals using this part of the river;
- Improve communications, interaction and involvement among the ten-twelve area landowners;
- Address residents' concerns relating to these matters; and
- Avoid creating a park and recreation district to collect fees, regulate businesses, create rules/ordinances governing criminal offenses, and enforce penalties.

Historically, Texas State Tubes (TST) and Don's Fish Camp (DFC) have operated their river-tubing businesses independent of one another in terms of river clean-up, security, and interaction with local landowners. In 2014, both companies worked with constables and state troopers to reduce litter and enhance river security/accountability for area residents by expanding law enforcement coverage.

Although some property owners appreciated these efforts, we acknowledge that neither company has communicated well enough with the landowners in the past, nor have we yet pooled our resources or coordinated our efforts thus far. We must provide a robust, structured, ongoing commitment of financial resources to effectively address residents' concerns and protect the river's long-term ecological health through greater litter reduction and water quality protection efforts.

Through this agreement, TST and DFC commit to coordinate efforts to fund and implement third-party contracts and arrangements to provide the financial resources, services, and functions needed to keep the river clean, safe, and ecologically sound; retain reasonable law enforcement oversight to provide security services; and provide a landowners hotline and other communications services to enhance safety and accountability for area residents and landowners, as well as a safer recreational experience for all river users.

**Legislative Background and Concerns Regarding SB 234**

Both TST and DFC have undertaken this agreement to address the concerns of area property owners and residents. We appreciate the leadership of Senator Judith Zaffirini. Last session, Senator Zaffirini introduced SB 280 to create a new special district. The legislation passed the Senate, but died in the House. This session, Senator Zaffirini filed SB 234—a more expensive, expansive version of the previous legislation.

We share a number of concerns about SB 234, including: the way the special district is to be created and structured, and the unlimited powers it gives the district, including authority to:

- Issue revenue bonds and incur other types of debt, specifically, revenue bonds and anticipation notes;
- Hire staff and contractors;
- Annex land;
- Purchase land and assume control of parkland and parks outside the district and county; and
- Enter into contracts up to \$50,000 without advertisement or competitive bidding (the same authority held by county commissioner's courts).

**Mini-County Government Powers.** Within the small geographic area of the proposed Parks and Recreation District, SB 234 would create a “mini-county” government that could assess permit fees; regulate all types of businesses and services; issue revenue bonds and bond anticipation notes; penalize, fine and prosecute individuals and businesses; annex land; own and operate facilities; regulate the environment, in general; own and operate parks, both inside and outside the district’s boundaries; undertake road improvements and permanent improvements; acquire land to create a park in or outside the district; and develop, improve, protect, and promote the land.

**Setting of Fees.** SB 234 directs the board of the proposed parks and recreation district to set fees “in amounts that will yield revenues at least sufficient to pay the district expenses...and produce revenue at least sufficient to pay the expenses of operating and maintaining the district facilities.” This is particularly troubling, given that the bill also allows the district purchase and operate unspecified facilities and parks, and do many things beyond cleanup and security. Instead of limiting the district’s budget by the amount of fees generated, the bill allows the district to recover the revenue needed to fund other expenditures by increasing user fees or license permit fees on the businesses operating within the district.

**Debt Transfer to Counties.** Senate Bill 234 contains other provisions that should concern Guadalupe and Caldwell County taxpayers. If the district is dissolved, the bill authorizes the board to transfer its debts to the counties. Because the district’s area in each county is so small (only one precinct), effectively, the bill allows a very small subset of voters in the precinct adjacent to the river to financially encumber the county and all county taxpayers with significant debt – even though those taxpayers had no say in its creation or operation.

**Election Process.** The legislation would create a hybrid multi-county governmental entity through an election process that could conceivably allow a majority of voters from the combined counties “as a whole” to override the preferences of a majority of the voters in one of the counties. The commissioner’s courts are instructed to approve or disapprove the creation of the district based on the total votes from both counties, and to jointly supervise and approve the board’s actions.

**User Fees.** The fees the district is allowed to collect, and the activities for which the district is allowed to assess, are dramatically increased relative to the legislation considered in 2013. The 2013 legislation initially proposed a \$1.50 user fee per customer, but the Senate-passed version capped it at \$1. This session, SB 234 would allow the district to assess a \$3 fee per customer and for each service provided to the customer. This would constitute an 18-30 percent tax increase on each tube rental.

**Regulatory Authority.** The bill also gives the district robust regulatory authority, including collecting fees and issuing revenue permits, over many types of businesses. It also appears the legislation would allow the district to use fees collected for purposes beyond the stated goals of ensuring the cleanliness and safety of the three-mile segment of the river involved, and the security and accountability for residents and landowners.

**Fairness in Competition.** The legislation excludes from the district the length of river that flows through Hays County, only two miles upriver, where the San Marcos Lion’s Club’s tubing operation is one of our major competitors. While our costs would dramatically increase exclusively due to the district’s user-fee levies and license permit fees, our competitor’s costs would remain the same. This discriminatory policy approach is also concerning because, ecologically, the area is a community of interest.

**Annexation and Representation.** While the segment of the river flowing through Hays County is currently excluded from the district, SB 234 allows the district to annex new areas beyond its boundaries. However, any new areas annexed would become subject to the regulations and fees of the district, and would have no representation on its board.

**Expression of Commitment and Request for Legislative Consideration**

Texas State Tubes and Don's Fish Camp believe the contractual commitments made through this MOU eliminate the need for SB 234. We recognize need to address concerns about litter and security on the river; however, we do not believe the proposed legislation is the best solution. As operators, we have personnel on the river daily. We are in the best position to know where the litter is, where security is needed, and to resolve these issues. We ask Senator Zaffirini and other members of the legislature to recognize our commitment and give us the opportunity to address these issues, without creating a new bureaucracy with such broad authority.

The solution for resolving these problems—thereby improving the river's beauty and enhancing the river experience—is cooperation among all river operators, coupled with increased accountability, interaction and involvement with the landowners.

The programs needed for success can be implemented and managed most efficiently and effectively by those closest to the problem—the operators. By execution of this MOU, we are committed to transparency and accountability through reporting and auditing of data relating to all funds expended and all program activities.

This MOU lays out a coordinated approach between TST and DFC that includes-third party contracts to provide: (1) increased dive cleanups; (2) increased top-water cleanups; (3) more security personnel; (4) a hotline for property owners and residents; (5) increased environmental and safety awareness programs; and (6) a documented accountability and reporting process, with results communicated to all parties concerned.

**Contractual Commitments of Memorandum of Understanding (MOU)**

- A. Through this MOU, TST and DFC adopt tangible, measurable goals, and pledge the ongoing annual commitment of financial and administrative resources to the plan and activities described herein. The MOU provides specific assurances to affected river residents and members of the Texas Legislature, including enforcement of responsible enjoyment of the river; accountability to residents and landowners in the area; and greater cleanup and environmental protection efforts and activities.
- B. We commit to keeping the segment of river where we operate cleaner; providing increased security; and responding more quickly and effectively to property owners' concerns. Generally, we pledge to create an environment that will set the standard for river-tubing operators nationwide.
- C. To achieve these goals, TST and DFC will create and annually fund a dedicated account in the amount equal to \$1.50 per tubing patron. We agree that all designated funds will be used exclusively for river cleanup, river security, and landowner relations. The budget for calendar year 2015 is established at \$105,000 minimum, but will not exceed \$140,000 in the first year.
- D. In addition to providing all necessary funding for this effort, TST and DFC agree to provide a full report at the end of each tubing season (September 30 of every calendar year) to Caldwell and Guadalupe county commissioners, relevant landowners, and other interested parties. This report will quantify the results of our river cleanup, security and communication/awareness activities.
- E. All funds expended will be audited and verified by a third-party auditor. Following the 2015 benchmark initiative, based on analysis and input from all interested parties, new goals may be set and the process adjusted, as needed.
- F. At all times, TST and DFC will have shared, equal access to all information, data, reports, and original records for all activities undertaken through third-party contracts and arrangements included in this MOU.

Information relating to security issues or citations, hotline calls or issues, or tickets issued by contract security officers must be collected, maintained, and made accessible on demand by either company party to the MOU. We pledge to keep accurate, original records; be accountable for and provide access to all records; and fully disclose to each other and the public the efforts undertaken through this MOU.

- G. This contractual MOU will renew automatically on an annual basis. For 2015 and in subsequent years, TST and DFC will voluntarily commit the funds necessary to sign contracts and engage collectively with third parties to undertake the activities necessary to achieve the goals of this plan. We will make that information available for review, verification, and audit.
- H. In addition to the deliverables committed to through the third-party contracts and arrangements outlined below, TST and DFC will only rent coolers that 24 quarts or smaller, and will sell alternatives to non-disposable containers to help reduce litter through the reduction of disposable containers.
- I. TST and DFC will both provide signage and posters at their business locations to highlight and reinforce the State of Texas laws regarding alcohol consumption, and also commit to include in the customer waiver a prohibition on underage drinking.
- J. We will undertake and fund specific programs/activities at the budget levels specified below. The programs and activities are consistent with the goals of the parks and recreation district proposed in SB 234, but they will be executed more cost-effectively, with less government overhead and at about one-third the cost, and with less exposure for new taxpayer debt at the local level.

**Minimum Total Budget and Funds Allocated to Fund Third-Party Contracts/Arrangements**

\$ 42,984	Underwater dive cleanup by Texas Pristine Rivers, Inc.
\$ 43,050	Law enforcement costs, with a 25 percent buffer to cover additional security costs
\$ 14,600	Property owner hotline; environmental and safety awareness Initiatives by Texas River Alliance
<b><u>\$ 100,634</u></b>	<b>Total committed expenditures for 2015 minimum budget</b>
\$ 4,366	Reserve funds beyond minimum budget committed expenditures
<b><u>\$ 105,000</u></b>	<b>Minimum total budget for 2015</b>

K. Specific Programs Funded Annually through MOU for Cleanup, Security, and Communication

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.

- **Underwater Cleanup:** After reviewing available bids, Pristine Texas Rivers Inc. was selected to perform underwater cleanup (see attachment for details and scope). 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 (see attachment for details and scope).

2. Commitments to Provide Increased Security and Community Response

Our stated goals are a 50-75 percent increase in law enforcement presence on the waterway and additional security support for the community immediately adjacent to and around the river. These desired security levels will 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 4<sup>th</sup>, and Labor Day).

- To meet these goals, TST and DFC are working with Caldwell County constables and local state troopers to provide additional security staffing on the river April 1-September 15, 2015. The arrangement specifies security shifts from 2:00 p.m.-8:00 p.m., with additional staffing for the three major holidays (Memorial Day, July 4<sup>th</sup>, and Labor Day) at levels specified below.
- Along with other parties, TST and DFC will have unrestricted access to view and audit the tickets written by officers providing contracted services through this MOU arrangement.
- On all tickets or citations issued, contracted security officers must note the origin of the originating complaint.
- Security dates and pricing numbers for 2015 are as follows:

April 4, 5, 11, 12, 18, 19, 25, 26	2 officers	\$3360
May 2, 3, 9, 10, 16, 17, 31	2 officers	
May 23, 24	6 officers	
May 25, 30	4 officers	\$7140
June 6, 13, 20, 27	4 officers	
June 5, 7, 12, 19, 21, 26	2 officers	\$5880

July 4, 11, 18, 25	6 officers	
July 5, 12, 19, 26	2 officers	
July 2, 9, 16, 23, 30	2 officers	\$7560
August 1, 8, 15, 22, 29	6 officers	
August 2, 7, 16, 21, 30	2 officers	
August 6, 13, 20, 27	2 officers	\$7560
September 5, 6	6 officers	
September 7	2 officers	\$2940

Total budget for law enforcement officers is \$34,440. An increase of 25 percent in funds allocated would provide a budget of \$43,050, which is a very safe number to fund the desired levels of enhanced security for the recreational season. These additional funds will be dedicated and held in reserve, in the event they are needed to meet the goals specified in this section.

3. Enhanced Property Owner Communications and Operator Accountability

We are contracting with an entity to advertise and maintain a property owners' hotline, which property owners can call to raise issues and report problems during operational hours. We are undertaking other educational and cleanup efforts to provide environmental and safety awareness programs. We will also provide educational information at our business locations about applicable laws relating to littering, trespassing, drinking and noise restrictions.

- After reviewing bids, Texas River Alliance (TRA) was selected to operate and staff the new property owners' hotline and undertake litter reduction and litter reduction awareness activities. The agreement terms are outlined below. The contract amount is \$14,600.

**Property Owner Communication Hotline**

The Texas River Alliance will maintain a communication hotline to which all property owners along the river will have access. The hotline will allow them to report and request immediate assistance with incidents occurring on their property, as well as litter-related issues. This will put property owners in direct contact with cleanup crews and law enforcement officials on the river. The TRA will have direct phone contact with law enforcement officers. The cost is \$2,400 a month for four in-season months per year. The TRA will handle in-season calls, as specified through the contract. Off-season calls will be handled, as appropriate, by either TST or DFC.

- Both TST and DFC will have unrestricted individual access to all hotline call log information, as well as all data and reports provided by TRA. Hotline calls will be tracked and recorded according to data available on the company that rented to the tubing customer against whom the hotline complaint was made. Calls will also be tracked and recorded by hotline incidents, problems or calls to law enforcement. Both TRA and the hotline will keep official records of the type of law enforcement needed, if any, to assist with the call. Records will also indicate, where applicable, the county from which law enforcement personnel were called.
- Records of all information related to hotline calls involving contract security officers will also be recorded, maintained, and made available to TST and DFC.

**Environmental Awareness, Litter Reduction and Security Enhancement Efforts**

The TRA will promote litter awareness/reduction efforts, including providing signage and mesh trash bags to all tubers and kayakers who are customers of TST and DFC.

The TRA will utilize funds to sponsor three litter pickup days during the season involving area college students and locals.

The TRA will sponsor one booth at the annual Texas Wild Rice Festival in San Marcos, where it will promote the health and importance of the San Marcos River.

- All branded events or materials undertaken by TRA with funds provided through this MOU, or through contracts related to this MOU, must be approved by both TST and DFC and must include the names of both TST and DFC, if company names or other identifying information is utilized in any manner.
- TST and DFC may only participate as co-sponsors of events or activities, or in program materials funded by the TRA contract through this MOU. All efforts associated with this program must be

approved by and sponsored jointly by both companies.


L. 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.

2015 Budget Overview: Amounts For Each Program Area Addressed in MOU

\$ 42,984	Underwater dive cleanup by Texas Pristine Rivers Inc.
\$ 43,050	Law enforcement costs, with a 25 percent buffer to cover additional security needs
\$ 14,600	Property owner hotline and environmental and safety awareness initiatives by Texas River Alliance
\$ 100,634	Total committed expenditures for 2015 minimum budget
\$ 4,366	Reserve funds beyond minimum budget committed expenditures
\$ 105,000	Minimum total budget for 2015
\$ 140,000	Maximum total budget for 2015
\$ 35,000	Additional reserve amount for 2015 maximum budget
\$ 39,366	Total additional reserve amount for 2015 maximum budget

This MOU is a legally binding contract between TST and DFC to share in the commitment to provide the financing necessary to support the activities outlined herein. TST and DFC each agree to commit a minimum of \$25,000 and a maximum of \$35,000 to a dedicated account for 2015. 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 security arrangements 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 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 provide a safe and fun recreational experience for all those seeking to enjoy the river.

  
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Texas State Tubes, LLC.

  
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RKY Ltd.

Date Signed: 3-13-15

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