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# MEMORANDUM

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Date: August 5, 2015

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Colossal Cave Mountain Park Cooperative Management Operation and Development Agreement**

Attached is an August 4, 2015 final Cooperative Management, Operation and Development Agreement for the operation of Colossal Cave Mountain Park (CCMP). The terms and conditions have been agreed to by the new operator, who was selected through a competitive procurement process.

Today is the last day the existing leasee is operating CCMP. To ensure a seamless transition, the County authorized early entry and assumption of operations of CCMP by Ortega National Park, dba Colossal Cave, LLC.

This agreement will be on the August 17, 2015 Board of Supervisors Agenda for review and action. I will be recommending approval of the Cooperative Management, Operation and Development Agreement and will forward a memorandum outlining the benefits of this agreement prior to August 17, 2015.

CHH/anc

Attachment

c: John Bernal, Deputy County Administrator for Public Works  
Tom Moulton, Director, Economic Development and Tourism  
Christopher Cawein, Director, Natural Resources, Parks and Recreation  
Suzanne Shields, Director, Regional Flood Control District  
Linda Mayro, Director, Office of Sustainability and Conservation

**COOPERATIVE MANAGEMENT, OPERATION AND  
DEVELOPMENT AGREEMENT FOR THE OPERATION OF  
SHOW CAVE AND OTHER FACILITIES WITHIN COLOSSAL CAVE MOUNTAIN PARK**

**Highlights**

- 1) County, District and Manager wish to enter into this Agreement to allow Manager to operate, rehabilitate and develop the Property within the Park as a major natural attraction for Pima County and the region, attracting visitors to Pima County, and generating tangible economic impact and other benefits to the local economy.
- 2) Colossal Cave Preservation Park Historic District is listed in the National Register of Historic Places, and County wishes to maintain the historic integrity of this district and its contributing properties.
- 3) County and District hereby grants to Manager specific rights to use, occupy and manage the Property, inclusive of site facilities located within designated areas for the term and purposes described in this Agreement. Manager agrees that it will operate, renovate, develop, manage and maintain the Property under the terms and conditions set forth herein.
- 4) Contract Term is 10 years with two extensions of 15 and 25 respectively. Manager must not be in default and must perform maintenance and specific projects as outlined in Agreement
- 5) All improvements must be approved by the County; Colossal Cave is listed in the National Register of Historic Places. Any development or alternation within the historical district and its contributing properties will require consultation with Pima County and the State Historic Preservation Office in advance to avoid adverse effects to individual resources and to the district as a whole. Manager has agreed to spend a minimum of \$60,000 per year on maintenance/repairs (*labor not included*).
- 6) Minimum Rent will pay to County as minimum rent twenty thousand dollars (\$20,000.00) annually. Manager will pay percentage rent calculated using the following rates and benchmarks:  
  
  - 0% on annual Gross Revenues up to \$2,000,000
  - 2% on annual Gross Revenues from \$2,000,000 to \$3,000,000
  - 4% on annual Gross Revenues from \$3,000,000 to \$4,000,000
  - 6% on annual Gross Revenues from \$4,000,000 to \$5,000,000
  - 8% on annual Gross Revenues from \$5,000,000 to \$6,000,000
  - 10% on annual Gross Revenues from \$6,000,000 and more
- 7) Manager must receive prior written approval from the County Administrator or his designee before conducting research on or in the Property.

**COOPERATIVE MANAGEMENT, OPERATION AND  
DEVELOPMENT AGREEMENT FOR THE OPERATION OF  
SHOW CAVE AND OTHER FACILITIES WITHIN COLOSSAL CAVE MOUNTAIN PARK**

This Cooperative Management, Operation and Development Agreement (“the Agreement”) is made effective as of August 17, 2015 by and between Pima County, a political subdivision of the State of Arizona (“County”), the Pima County Flood Control District, a special taxing district, (“District”), and Colossal Cave, LLC, an Arizona limited liability company (“Manager”) for the purpose of operating Colossal Cave (“Show Cave”), an historic show cave attraction, and other activities within defined areas (“the Property”) in Colossal Cave Mountain Park.

**RECITALS**

1. County and District are the owners of the real property known as Colossal Cave Mountain Park (“Park”). The Park is depicted in Exhibit “A” to this Agreement. The Property is depicted in Exhibit “B” to this Agreement.

2. Colossal Cave Preservation Park Historic District is listed in the *National Register of Historic Places*, and County wishes to maintain the historic integrity of this district and its contributing properties.

3. Manager is an Arizona Limited Liability Company organized for the purpose of operating the Show Cave and other activities within their designated areas as illustrated and described in *Purpose and Scope of Show Cave Attraction Activities* attached to this Agreement as Exhibit “C”.

4. County, District and Manager wish to enter into this Agreement to allow Manager to operate, rehabilitate and develop the Property within the Park as a major natural attraction for Pima County and the region, attracting visitors to Pima County, and generating tangible economic impact and other benefits to the local economy.

5. County and the District are authorized, pursuant to A.R.S. § 11-932, to enter into agreements for the management and operation of County public parks and County is authorized, pursuant to A.R.S. § 11-254.04, to appropriate and expend County funds for and in connection with economic development activities.

**AGREEMENT**

Now, therefore, County, District and Manager, in consideration of the above recitals which are incorporated herein by this reference and the mutual covenants set forth herein, agree as follows:

## **1. Grant of License to Manage Property**

County and District hereby grants to Manager specific rights to use, occupy and manage the Property, inclusive of site facilities located within designated areas for the term and purposes described in this Agreement. Manager agrees that it will operate, renovate, develop, manage and maintain the Property under the terms and conditions set forth herein. The scope of Manager's responsibilities and duties may be modified from time to time as the parties agree. Such modifications and the addition of amenities are contained within the Exhibits attached. The expenses of constructing and maintaining such additional amenities, and reasonable adjustments in Rent and other obligations, if any, may be allocated by written agreement of the parties.

Manager will take all reasonable measures to protect the scenic, cultural, ecological and aesthetic values of the Property and prevent native plant loss, damage to historical resources, alteration of archaeological features or soil erosion from improperly constructed or maintained developments, trails and public use areas.

### **1.1 Areas Not Granted to Manager**

County and District reserve the right to manage the undeveloped areas of the Park outside of the Property. This reservation extends to all known and unknown cave and karst features inside and outside of the Show Cave. The foregoing notwithstanding, during the Term of this Agreement (including Renewal Terms and Additional Renewal Terms), Manager will have a right of first refusal to operate known or unknown cave and karst attractions adjacent to or within the boundaries of the Park or nearby land owned by County or District if such caves or karst attractions are considered for use and are held open to the public as show caves by County or District so long as this agreement is in effect and Manager is meeting all conditions thereof.

### **1.2 Condition of Property Upon Delivery**

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County and District will deliver the Property (including parking areas, restroom facilities, buildings and other improvements) in good and safe working order. All sanitary facilities will be in compliance with applicable health and safety laws and regulations. Any structures and facilities, including septic tanks, trailers, buildings, refuse dumps and the like, that are obsolete, unusable, or potentially hazardous to employees or the public will be removed at County expense.

County will additionally endeavor to provide adequate and ADA-compliant parking and restroom facilities to Manager for use with the Property as funds may become available. Such facilities will be provided on a "turn-key" basis.

Manager will construct, provide, operate and maintain personal property and all equipment necessary for the establishment and operation of the Property.

### **1.3 Manager's Deliverables**

#### **First Six Months**

Manager will provide all of the following within the first six (6) months of the first year of operation for approval by County:

- 1) An overall operation plan of the Show Cave and other activities within the Property as outlined in Exhibit "C" including but not limited to, proposed type of cave tours, cave and campground hours, special events, a visitor safety plan that identifies priorities and methods for ensuring visitor safety. The plan must address emergency evacuation procedures and procedures for routine inspections.
- 2) A proposal identifying which days each year the Property will be closed to recreation, with specific information about what activities, if any, Manager would conduct or allow during those days.
- 3) A lighting plan that identifies any proposed changes in lighting within and outside the Show Cave.
- 4) Admission price plan for the attractions within the Property that may have a fee associated with the activity.
- 5) Manager and County will jointly prepare a waste management plan within the first six (6) months of the first year of operation that discusses what wastes are generated and how they will be disposed, with a checklist for self-audits and inspections. There will be no disposal of any waste in caves, over the known karst features, or over shallow groundwater areas. The plan will address remediation and prevention procedures for accidental discharges of waste.

#### **First Two Years**

Manager is responsible for providing the following within the first two (2) years of operation:

- 1) A recreation effects monitoring proposal for the Show Cave in conjunction with County. The object of this monitoring is to document and understand recreational impacts. Monitoring can be accomplished using photographs or other methods. Proper documentation of the location and frequency of cave monitoring will be required. Manager must consider the fragility of the cave and karst features and any disturbance that monitoring may cause.
- 2) A water supply operations plan developed in conjunction with County, for the facilities. The plan must include an inspection checklist and state the frequency of inspections.

- 3) A multi-year maintenance and repair plan with applicable long-range budgets (“Maintenance Plan”). The Maintenance Plan will be substantially as set forth in Exhibit “D” and will include a priority list of major maintenance, site facility and rehabilitation improvement projects (“Projects”). County has the right to deny or refuse to allow any proposed Projects, and the Maintenance Plan will be adjusted accordingly. Both parties will work to identify park rehabilitation needs, and potential funding for those Projects, throughout the Term of this Agreement.

### **First Ten Years**

Manager must meet the maintenance and repair commitments in the Maintenance Plan as long as County agrees upon all work in advance and the work meets applicable regulations. Further, Manager is obligated to make property and facility improvements, as summarized in Exhibit “D”, provided that County approves all such work in advance. County may, but is not obligated to, participate in maintenance and development projects financially or with in-kind services.

## **2. Term and Renewal**

### **2.1 Initial Term.**

The initial term (“Term”) of this Agreement will commence upon execution by County and District and extend through August 31, 2025.

### **2.2 Extension Options**

Manager may extend the Term of this Agreement for an additional fifteen (15) years from and after expiration of the initial Term (the “Renewal Term”), provided that Manager is then in full compliance with all its obligations under this Agreement, including the terms of its Maintenance Plan (except that failure to complete a Project will be excused if the failure is caused solely by circumstances beyond Manager’s control). Manager must exercise this option by giving County and District written notice of the exercise not more than two (2) years, nor less than one (1) year prior to the end of the initial Term.

The parties may mutually agree to extend this Agreement for an additional twenty-five (25) year period from and after expiration of the Renewal Term (the “Additional Renewal Term”). If Manager wishes to renew the Agreement for the Additional Renewal Term, Manager must so notify County and District in writing not more than two (2) years, nor less than one (1) year prior to the end of the Renewal Term. In that event, the parties will negotiate regarding the terms of any Agreement for the Additional Renewal Term.

### **3. Payments to County**

Manager will pay County, without demand or right of offset, rent as follows:

#### **3.1 Minimum Rent**

Commencing effective September 1, 2015, Manager will pay to County as minimum rent twenty thousand dollars (\$20,000.00) annually ("Minimum Rent"), payable in monthly payments of One Thousand, Six Hundred Sixty-Six (\$1,666.00) commencing on September 1, 2015 and payable on the first of each month thereafter. On September 1, 2020, the annual minimum rent will be adjusted upward, and will be subsequently adjusted upward every five (5) years thereafter, based on the percentage increase, if any, in the Consumer Price Index-Urban (CPI-U) for the previous five (5) year period or fifteen percent (15%), whichever is less. The first adjustment will be effective on September 1, 2020 and will be based on CPI-U percentage increase from September 1, 2015 – August 31, 2020.

#### **3.2 Percentage Rent**

In addition to the Minimum Rent, Manager will pay percentage rent calculated using the following rates and benchmarks:

0%	on annual Gross Revenues up to \$2,000,000
2%	on annual Gross Revenues from \$2,000,000 to \$3,000,000
4%	on annual Gross Revenues from \$3,000,000 to \$4,000,000
6%	on annual Gross Revenues from \$4,000,000 to \$5,000,000
8%	on annual Gross Revenues from \$5,000,000 to \$6,000,000
10%	on annual Gross Revenues from \$6,000,000 and more

Percentage Rent benchmarks will not be subject to adjustment for the CPI-U.

For purposes of this Agreement, the term "Gross Revenues" means all income receipts from any source arising out of operations or activities conducted at the Property, whether such revenue is revenue directly to Manager or to any subcontractor of Manager or other person or entity receiving revenue for activities conducted at the Property with the consent of Manager, subject to the limitation herein below relating to the area subcontracted or used by third parties. It is the intent of the parties that Gross Revenues be interpreted as broadly as possible to include revenue derived from use of the Property regardless of the recipient of such revenue. Gross Revenues do not include direct taxes charged on admissions or other monies collected for and paid to a taxing authority as sales or excise taxes and would not include normal charge-backs such as

rebates to charities using the Property, refunds, returns, credit card fees or uncollected amounts or activities conducted or under the auspices of Pima County.

Within forty-five (45) calendar days after the end of each month, Manager will report to County all Gross Revenues and charge-backs. On or before forty-five (45) calendar days after the end of each quarter, beginning for the quarter ending September 30, 2015, Manager will pay to County the estimated Percentage Rent year-to-date based upon an estimate determined by annualizing Gross Revenues year-to-date. On or before July 31 of each year of this Agreement and on or before forty-five (45) calendar days after the termination of this Agreement, Manager will provide to County a reconciliation of the Percentage Rent due for the preceding calendar year and will pay any balance of Percentage Rent for that preceding year or will deduct any overpaid Percentage Rent from the next payment of Rent. Manager will require, as part of all contracts with any sub-contractor, or other entity or person using the Property, that such concessionaire, sub-contractor, or other entity or person using the Property report to Manager and to County gross revenues received from activities on the Property.

The Minimum Rent and Percentage Rent are collectively referred to herein as the "Rent".

#### **4. Permitted and Required Activities**

##### **4.1 Operation of the Property**

Manager will operate the Property in accordance with the specifications set forth in Exhibit "B", Purpose and Scope of Property Activities, during the term of this Agreement.

Manager will be responsible for maintaining the Property as mutually agreed and outlined by the Maintenance Plan.

Manager will construct all such attractions and related improvements consistent with the Maintenance Plan and Capital Projects attached to this Agreement as Exhibits "D and "E". The parties may negotiate for additional projects and improvements on a case-by-case basis.

##### **4.2 Conduct of Activities on the Property**

Manager will determine the quantity and duration of cave tours, and special events on an annual basis. Manager will conduct its activities, and ensure that its employees and all permissible users of the Property conduct their activities in a professional manner and in compliance with applicable standards of practice for natural resource park facilities and federal, state and local laws.

#### **4.3 Right of Public to Access Park**

Except for designated holidays, the Park will be open to the general public, except for gated attractions within the Property (including Show Cave), and designated and scheduled special and private events ("Special Events").

All utilization of the Property will be scheduled and approved by the County and County will respond to any request for approval within thirty (30) business days after Manager submits it to County. Failure of County to timely respond will be considered approval. Any utilization of areas outside of the Property footprint must be scheduled and approved by County at least thirty (30) calendar days in advance.

#### **4.4 Fees**

Manager may charge fees for use of the Show Cave and attractions and for Special Events and other uses of the Property under control of the Manager in amounts approved in advance by County. County will respond to requests for approval within sixty (60) calendar days after submittal. Failure of County to timely respond will be considered approval. Manager will accompany any fee adjustment request with a market study of comparable show caves, similar attractions and local attractions, and their fee structures, which Manager believes support the Manager's requested fees. Property fees must be at fair market value, but Manager may choose to set rates lower at Manager's discretion. All fees will be included in the calculation of Gross Revenue and applied by Manager in connection with the use, operation and improvement of the Property.

#### **4.5 Alcohol**

Manager may serve and sell alcoholic beverages for consumption on the Property provided Manager complies with applicable liquor laws and provides County with the required insurance set forth herein.

#### **4.6 Signs**

Manager may affix and maintain upon the Property such signs relating to activities and attractions located in the Property as Manager deems appropriate; provided, however, that all signs utilized by Manager on or about the Property, whether visible from outside the Park or not, will at all times comply with applicable provisions of any applicable sign code (presently the *Pima County Sign Code*) and will be installed and maintained at Manager's sole cost. Any and all advertising signs placed by Manager on the Property will be immediately removed by Manager upon termination of this Agreement for any reason.

Any damage resulting from such removal will be repaired immediately by Manager at its sole cost. Manager will not remove any operational or safety signage from the Property except to maintain, repair or replace the signage.

Manager will pay for all costs of construction, erection, installation, maintenance and repair of any sign to be erected or installed or otherwise placed in the Property. Manager will, through coordination with County, identify the Park components thereof, in signs and in any of their written materials, as belonging to Pima County. Notwithstanding anything herein to the contrary, any signs requested by County and not otherwise required to be installed will be constructed and installed at County's expense.

## **5. Property Improvements**

### **5.1 Planning, Engineering and Construction**

Planning, engineering and construction will be necessary to rehabilitate, renovate and develop the Show Cave and other attractions located in the Property. Manager will develop all of the elements necessary for the County approved projects on the phases of construction on the site as defined in Exhibits "D" and "E" at Manager's sole cost and expense.

**5.1.1** County and Manager may agree to share costs associated with construction, maintenance and repair of the Property or facilities located in the Property, in a manner different than that described in this Agreement if the parties determine that such cost sharing will be beneficial to both the Property and the general public, and such agreement is entered into in writing and signed by both parties. Projects that fall into this category will be handled on a case by case basis as they arise.

### **5.2 Consent of County Required**

**5.2.1** Manager may not make any improvements, alterations, additions, or changes to the Premises ("Alterations") involving an expenditure of more than \$10,000.00 (the "Maximum Expenditure Amount"), without obtaining the prior written consent of:

**5.2.1.1** The County Administrator or his designee if the cost of the Alterations is greater than \$10,000.00 and less than \$100,000.00; or

**5.2.1.2** The County's Board of Supervisors if the cost of the Alterations is more than \$100,000.00.

**5.2.2** For any Alteration that costs more than the applicable Maximum Expenditure Amount, Manager will provide County with prior written notice of the proposed Alterations (the "Notice of Alterations"). The Notice of Alterations must include plans and specifications for the Alterations. County has forty-five (45) calendar days after receipt of the Notice of Alterations to approve, amend, or reject the proposed Alterations. Failure of County to respond to the Notice of Alterations within forty-five (45) calendar days after receipt of the Notice of Alterations by County will be considered approval.

**5.2.3** County will not unreasonably withhold consent to proposed Alterations; provided, however, it will be reasonable for County to withhold consent if, among other reasons, the Alterations:

**5.2.3.1** Adversely affect the integrity of any structural, mechanical, or electrical system of any portion of the Premises or affect the integrity of the Premises or the Premises features or its infrastructure;

**5.2.3.2** Result in County being required to perform any work that County could otherwise avoid or defer;

**5.2.3.3.** Result in an increase in the premiums for any hazard or liability insurance carried by County or result in an increased risk of liability or pose a safety hazard; or

**5.2.3.4.** Result in an increase in the demand for utilities or services (including wastewater treatment) that the County already provides to the Property.

**5.2.3.5.** Are located within the *Colossal Cave Preservation Park Historic District* and may require additional local, state or Federal approval.

### **5.3 No County Liability for Approval of Alterations**

County's review of the plans and specifications is solely for the County's purposes and does not imply that the County has reviewed the plans and specifications for quality, design, laws, compliance or other like matters. Accordingly, notwithstanding that any construction drawings are reviewed by any County architects, engineers, or consultants, County has no liability

whatsoever in connection therewith and is not responsible for any omissions or errors contained in any construction drawings, and Manager's indemnity set forth in the *Indemnification Clause* of this Agreement specifically applies to the construction drawings. County's review is to determine that the proposed Alterations are consistent with the purposes of this Agreement of providing recreational opportunities for the benefit of the people of Pima County within an historical and culturally sensitive Mountain Park.

#### **5.4 Construction of Improvements**

All improvements must comply with the *Pima County Uniform Building Code* and other laws, regulations and orders for any construction, whether of a permanent or a temporary nature, and Manager must obtain all applicable permits from regulatory agencies, including but not limited to the Pima County Development Services Department, the Pima County Flood Control District, State Historical Preservation Office and the State Fire Marshal, with such permits demonstrated through plans submitted for Pima County approval. Because Colossal Cave is listed in the *National Register of Historic Places (Exhibit F)*, any development or alternation within the district and its contributing properties will require consultation with Pima County and the State Historic Preservation Office in advance to avoid adverse effects to individual resources and to the district as a whole.

All construction contracts must include an indemnification provision requiring the contractors to indemnify, defend and hold harmless Manager and County from all losses, claims, suits, demands, expenses, attorney's fees or actions of any kind or nature arising from the contractor's negligent or intentional acts, errors or omissions. Manager will cause said contractors to obtain insurance coverage of a type and amount acceptable to County and to name the Manager and County as additional insured with respect to liability arising out of the performance of said contracts. Within thirty (30) calendar days after completion of any buildings or improvements that exceed that Maximum Expenditure Amount, Manager will deliver to County a complete and reproducible set of the plans and specifications of the improvement or buildings as built.

#### **5.5. Indemnification by Manager**

Manager indemnifies, holds County and District harmless, and will defend County and District against liability for any damage to property or injury to persons occasioned by any construction by Manager on the Premises.

## **5.6 Property of County**

Manager agrees that, upon construction or installation, any building, structure, or system on the Property, regardless of whether constructed or installed by Manager, becomes the property of County or District, as their interests in the Property may appear, except for those buildings, structures, or systems that can be readily removed by Manager and which have not become affixed to the Property, which will remain the property of Manager. Manager will repair or restore any real or other property damaged during the removal of any such buildings, structures, or systems. During the term of this Agreement, Manager will have the right to use improvements of any type on the Property unless otherwise limited by any provision of this Agreement.

## **6. Long Range Plan**

County will be developing a *Natural Resource Management Plan* ("Management Plan") for the Park, which will be approved by County. County and Manager will cooperate to develop a long-range plan for the Park ("Plan") as part of the Management Plan. The Plan may include planned use and operation for other real property owned by County or District in the area of the Park. County and Manager anticipate that the Plan may provide the parties with opportunities for shared cost and benefits.

## **7. Repairs & Maintenance**

- 7.1** Manager will, at Manager's sole cost and expense, keep the Property, including all buildings, improvements, and landscaping located thereon, and all exterior, interior, structural and mechanical components thereof, in good, clean, safe condition and repair.

Manager is not obligated to perform repairs or maintenance to the extent that such repairs or maintenance are required as a result of the sole negligence or intentional misconduct of County, its agents, employees, or contractors, which repairs and maintenance County will conduct at County's sole cost and expense. Manager will, at Manager's expense, make all repairs to the Property made necessary by reason of the negligence or intentional misconduct of Manager, its officers, directors, members, managers, employees, licensees, invitees, subcontractors, servants or agents, or for normal wear and tear incurred as a result of property operation in accordance with this agreement and public law.

- 7.2** Manager is responsible for proper disposal of all waste generated at the Property.

- 7.3** Repairs to mechanical systems, such as HVAC, must be performed promptly in order to minimize any waste of utilities or water. Notwithstanding anything herein to the contrary, County and Manager may agree to share costs associated with construction, maintenance and repair of the Property or facilities located in the Property, in a manner different than that described in this Agreement if the parties determine that such cost sharing will be beneficial to both the Property and the general public, and the parties enter into such an agreement in writing.

**8. Obligation to Reconstruct**

During the term of this Agreement, Manager will maintain fire and casualty insurance on all improvements located on the Property and all of Manager's personal property. In the event the Property or any portion thereof is damaged by fire or other perils, Manager will forthwith repair the damage, restoring the Property to the condition which existed prior to the casualty, in which event this Agreement will remain in full force and effect. If County and Manager determine that repair of the damage is not prudent in light of the existing use of the Property, Manager will use any insurance funds received by Manager for another purpose related to the Property as agreed to by the parties. In the event of any such casualty which damages Manager's furniture, fixtures and/or equipment at the Property, Manager will proceed with reasonable diligence to restore, repair or replace all of its personal property to the same condition which existed prior to the casualty. Manager will continue the operation of the Property to the extent practicable during any period of reconstruction or restoration.

**9. Liens and Encumbrances**

Manager will keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Manager. Notwithstanding the prohibition on liens on the Property itself, Manager may encumber Manager's interest in this Agreement for the construction of improvements on the Property and, to the extent required, County or District will execute any documents required by a lender in order to provide the lender with a security interest in Manager's right to use any improvements located on the Property pursuant to this Agreement. County and District will also execute consent, estoppel, non-disturbance and similar instruments reasonably requested by Manager's lenders; provided, however, County and District are not required to amend this Agreement or consent to additional notice or cure provisions as part of any such consent, estoppel, non-disturbance or similar instruments.

**10. County's Option to Perform Maintenance and Repairs at Manager's Cost**

If Manager is in default hereunder (after the expiration of the cure period set forth in *Section 21.1.6* below) because it fails to perform its maintenance or repair obligations hereunder, in addition to the remedies set forth in *Section 21.2*, County, without notice, may, but is not obligated to, perform Manager's obligations.

All reasonable costs and expenses reasonably suffered or incurred by County in performing these obligations, which will accrue interest at a per annum rate of six percent (6%), will be paid by Manager to County within thirty (30) calendar days of notice thereof. Any such default by Manager will not be considered cured until Manager has fully reimbursed County for the costs incurred in performing Manager's obligations hereunder plus interest.

**11. CONCESSIONS AND RELATED ACTIVITIES**

**11.1. Authority of Manager**

**11.1.1. Permitted Contracts.** Manager has the authority to operate and conduct, or contract with third parties to operate and conduct, concessions (including, but not limited to, food, drink, souvenirs, printed material and similar items), museums, campgrounds and related activities on the Property.

**11.1.2. Contracts Not Permitted.** Notwithstanding section 11.1.1, Manager may not contract with any third party for trail rides or campground use without the prior written consent of the County Administrator or his designee. Manager may contract with any third parties for the operation and maintenance of Colossal Cave.

**11.2. Permits**

If food is served on the Premises, Manager will obtain all appropriate food permits and will comply with all Pima County health regulations.

**11.3. Contracts Greater than One Year**

All subcontracts with third parties for the operation of the Premises or the operation of concessions or other activities on the Premises which have a term of more than one (1) year will be subject to the prior approval of County's Board of Supervisors.

**11.4. Copies of Contracts**

Manager will provide County with copies of all contracts entered into by Manager relating to the Property.

## **12. Prohibited Activities**

### **12.1 Activities Outside the Permitted Activities**

Manager will not do or permit anything to be done on or about the Property, or bring or keep anything therein which is not within the permitted use of the Park as set forth in this Agreement.

### **12.2 Activities Not Insured or That Affect Insurance**

Manager will not conduct any activity or permit any activity to be conducted on the Property which is not covered by the insurance policies provided pursuant to Section 17 herein without first obtaining the written consent of County and without providing additional insurance covering the activity or event and with coverage limits and carriers acceptable to County.

Manager will not do or permit anything to be done in or about the Property, or bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Property or any of its contents or cause a cancellation of any insurance policy covering the Property or any part thereof or any of its contents.

### **12.3 Storage**

Manager will not store within the Property equipment, supplies, or scrap items, other than that to be used in the Property, or used in connection with activities described in this Agreement or in the operation of the Property.

### **12.4 Unlawful Activities**

Manager will not use the Property, or permit anything to be done in, on, or about the Property, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

### **12.5 Cave Access and Research**

Manager must receive prior written approval from the County Administrator or his designee before conducting research on or in the Property, and provided that such research will not have a material adverse impact on the karst features and flora and fauna of Colossal Cave and other known caves. The manager has no right to manage, enter, authorize others to enter, explore, monitor or research either the caves known as La Tetera and Arkenstone Cave or any and

all other caves or karst discoveries on or about the Property, other than the currently mapped areas of Colossal Cave itself as depicted in "Exhibit G". If in the course of operating the Property, Manager or any employee or agent of Manager becomes aware of a karst, natural or cultural feature previously unknown to County, Manager will within two (2) business days provide written notice of the new discovery to County and will immediately secure the discovery and refrain from entering or disturbing the site.

All new discoveries will be kept confidential and will not be disclosed to any third party unless authorized in writing by the County Administrator. Manager will not permit the collection, removal or exportation of any natural or cultural items from the property without prior written approval of the County Administrator or his designee and in compliance with all applicable laws, rules and regulations.

**13. Books, Records, and Reports**

**13.1** Manager will keep and maintain proper and complete books, records and accounts of all its operations conducted pursuant to this Agreement, in a manner approved by the Pima County Finance Director, which will be open for inspection and audit by County or its auditors, and the Arizona Auditor General, at all reasonable times.

**13.2** Minutes of the meetings of the Board of Directors of Manager will be provided to County within ten (10) business days after each meeting.

**13.3** Manager will provide County during each year of the term of this Agreement:

**13.3.1** An annual report on the operation and activities of the Property.

**13.3.2** If the Gross Revenues of the Property exceed one million dollars (\$1,000,000.00) in any year of the Term, the Renewal Term, or the Additional Renewal Term, a certified audit and annual financial report of the operations under the control of the Manager, for the preceding fiscal year, within sixty (60) calendar days of the conclusion of the Manager's fiscal year. Otherwise, Manager will provide a reviewed financial statement and may be subject to audit by the County.

**13.3.3** Assistance in the County's preparation of a written inventory of all buildings, equipment and items of value on the Property belonging to or insured by the County, by October 31<sup>st</sup> of each year this agreement is in effect.

13.3.4 A proposed budget for the following year, by November 30<sup>th</sup> of each year this Agreement is in effect.

**14. Security and Safety**

Manager is responsible for all security and safety relating to the Property and will provide such security personnel and security and safety features sufficient to adequately protect the Property and persons on the Property from property damage or bodily injury.

**15. Compliance with Laws**

Manager will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona govern the rights of the parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement must be brought and maintained in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during any term of this Agreement apply, but will not require an amendment.

**16. Indemnification**

**16.1** To the fullest extent permitted by law, Manager will indemnify, defend, and hold harmless County and District and their officers, employees and agents from and against any and all losses, costs, or expenses (including reasonable attorney's fees) incurred or suffered by County or District as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, but only to the extent that such losses, costs or expenses result in vicarious/derivative liability to County or District arising out of any act, omission, negligence, misconduct, or other fault of the Manager, its officers, officials, agents, or employees. Manager obligations under this Section 16 survive the expiration or earlier termination of this Agreement.

**17. Insurance**

**17.1 Insurance Required**

Manager will, at Manager's sole cost and expense, obtain and maintain, during the term of this Agreement and any renewals thereof, the following insurance policies:

**17.1.1 Commercial General Liability Insurance** with coverage at least as broad as ISO form CG 0 01 in an amount not less than \$5,000,000, covering the Property furnished to the Manager for exclusive use,

endorsed to include Pima County as an additional insured with coverage at least as broad as ISO form CG 20 10, and covering all activities carried out on the Property. Manager may require that this insurance be carried by those users of the Property who actually carry out the activities being insured, but this does not relieve Manager of any responsibility for ensuring that the proper coverage is in place, and Manager will be liable to the County for any failure by such third party to furnish the required insurance. Subject to the breadth and limitations of coverage described above, this insurance policy must cover activities conducted on the Property to the extent that they are not covered by insurance policies of users of the Property.

- 17.1.2 Commercial Automobile Liability Insurance with coverage at least as broad as ISO form CA 00 01 in an amount not less than \$1,000,000 for vehicles actually used in the operations at the Property (as compared to be used for simple commuting).
- 17.1.3 Workers' Compensation Insurance with statutory limits, with Employers' Liability coverage in an amount not less than \$1,000,000 per injury, illness, or disease.
- 17.1.4 Commercial Property, Boiler and Machinery Insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering selected items of Manager's personal property located at the Property.
- 17.1.5 Liquor Liability Insurance in an amount not less than \$3,000,000 per occurrence if alcohol is sold or provided at the Property, endorsed to include Pima County as an additional insured.
- 17.1.6 Special Events Insurance in an amount acceptable to the Pima County Risk Manager for any event held at the Property not covered by other insurance provided as required above. County reserves the right to increase the limits on coverage for unique or high risk Special Events.

## **17.2 Insurance Certificates and Copies of Policies**

Manager will provide County with current certificates of insurance which will show County and District as an additional insured where required. All certificates of insurance must provide for guaranteed thirty (30) calendar days written notice of cancellation, non-renewal or material change. Manager will cause certified copies of its insurance policies and the policies of third parties using the Property to be delivered to the County.

**17.3 Waiver of Subrogation**

Each party waives its claims and subrogation rights against the other for losses typically covered by property insurance coverage.

**17.4 Changes to Insurance Requirements**

County retains the right to reasonably increase the limits or types of coverage from time to time as determined in the best interests of County by the Pima County Risk Manager.

**17.5 Injury Reports**

Manager will provide notice to County, on a form approved by Pima County Risk Management, of any significant injury, defined as any injury likely to result in head or spinal injury, loss of a limb or organ, or serious burns or scarring, or requiring medical evacuation or treatment by paramedics within one (1) business day of Manager becoming aware of such injury. Pima County's Risk Manager may reasonably redefine the reporting requirement by written notification to Manager. Manager will retain records related to significant injuries for not less than seven (7) years and will fully cooperate in any investigation of injuries or damage by Pima County Risk Management or its insurers, agents or contractors. Nothing in this section will constitute as a request by County, or a requirement, that Manager provide any information in contravention of the *Health Insurance Portability and Accountability Act (HIPPA)*.

**18. Environmental Compliance**

**18.1 Protection of Cultural and Paleontological Resources**

Colossal Cave Preservation Park Historic District (Historic District) was listed on the *National Register of Historic Places* in 1992. The Historic District boundary is depicted as "Exhibit F". In planning and analysis for the *Sonoran Desert Conservation Plan*, Colossal Cave was identified as a Priority Cultural Resource for preservation. It is County policy to conserve and protect cultural resources that are located on land owned by Pima County, and to mitigate any negative effects that Pima County's operations and land-use planning decisions may have on cultural resources (Pima County Board of Supervisors Policy C3.17). This particularly applies to the Historic District, which is listed on the *National Register of Historic Places*.

Any development, alteration or ground disturbance within the Property, which is located entirely within the Historic District, must be reviewed and approved by

the County, and may require consultation with the *Arizona State Historic Preservation Office* and other agencies in order to assess the potential and mitigate any adverse effects to individual resources and to the historic district as a whole.

**18.2 Hazardous Materials Prohibited; Clean Air Act**

Manager will not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Property by Manager, its Partners, agents, employees, contractors or invitees, without the prior written consent of County other than such Hazardous Materials which are necessary or useful to Manager's operation of the Property and such materials will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Manager's operations on the Property must comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3.

**18.3 Indemnity. If :**

**18.3.1** Manager breaches the obligations stated in Section 18.1, or

**18.3.2** the presence (whether consented to by County or otherwise) of Hazardous Material on the Property or on or in the soil or ground water under or adjacent to the Property caused or permitted by Manager, its Partners, agents, employees, contractors or invitees results in contamination of the Property or such soil or ground water, or

**18.3.3** contamination of the Property or such soil or ground water by Hazardous Material otherwise occurs for which Manager is legally liable to County for damage resulting therefrom, or

**18.3.4** contamination occurs elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Property, then Manager will indemnify, protect, defend and hold County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Property or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Property or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Property or any part thereof, and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees) which arose or arises during or after the term of this Agreement as a result of such contamination.

The foregoing obligation of Manager to indemnify, protect, defend and hold County harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Manager, its agents, employees, contractors or invitees, in the Property or the soil or ground water on, under or adjacent to the Property or elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Property.

**18.4 Clean-Up**

Without limiting the foregoing, if the presence of any Hazardous Material on or in the Property, or the soil or ground water under or adjacent to the Property caused or permitted by Manager, or its Partners, agents, employees, contractors or invitees results in any suspected contamination of the Property, the soil or ground water under or adjacent to the Property, Manager will promptly notify County in writing and take all actions, at Manager's sole cost and expense, as are necessary to return the Property, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Property, or to such soil or ground water; provided that County's approval of such actions must first be obtained, which approval will not be unreasonably withheld so long as such actions would not potentially have any material adverse long- term or short-term effect on the Property.

**18.5 Pre-existing Contamination**

Any Hazardous Materials contaminating the Property prior to possession of the Property by Manager will not result in liability for Manager under this Section 18 except to the extent such contamination is aggravated by the action or inaction of Manager.

**18.6 Notices Regarding Environmental Conditions**

Manager shall, within ten (10) business days following receipt thereof, provide County with a copy of:

- 18.6.1** any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Manager or the Property alleging any violation of any local, state or federal

environmental law or regulation or requiring Manager to take any action with respect to any release on or in the Property or the soil or ground water under or adjacent to the Property of Hazardous Material, or

- 18.6.2** any notices from a federal, state or local governmental agency or private party alleging that Manager may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Property or the soil or ground water under or adjacent to the Property or any damages caused by such release.

## **18.7 Hazardous Material**

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is:

- 18.7.1** defined as a "hazardous waste" under NRS 459.400 et seq.,
- 18.7.2** petroleum,
- 18.7.3** asbestos,
- 18.7.4** designated as a "hazardous substance" pursuant to *Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321)*,
- 18.7.5** defined as a "hazardous waste" pursuant to *Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903)*,
- 18.7.6** defined as a "hazardous substance" pursuant to *Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601) or*
- 18.7.7** defined as a "regulated substance" pursuant to *Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 et seq.*

## **18.8 Survival**

Manager's and County's obligations under this Section 18 survive the expiration or earlier termination of this Agreement and vacation of the Property.

**19. Utilities, Services and Taxes**

**19.1 Manager Responsible for Utilities**

**19.1.1 Utilities Other Than Water** Manager will pay the costs of all utility services on the Property, except water.

**19.1.2. Water** County currently operates and maintains two wells that provide water to the Property, and County will be responsible for maintenance of the wells. Manager will be responsible for the distribution system from the wells to the rest of the property. If the wells are not working, County will provide water for the cave area portion of the Property only for up to, but not longer than thirty (30) calendar days. In the event Tucson Water or another water company provides potable water to the Property, Manager must connect to such water provider, and Manager will be solely responsible for all fees to connect to such water provider and for payment of the monthly utility fees to the provider/utility company for such water. Manager will install and utilize low water use fixtures and in-line anti-siphoning devices for any rehabilitation, upgrades, or new construction projects located on the Property.

Manager is responsible to pay for the costs to provide and the use of all gas, heat, light, power, water, wastewater charges, telephone service, garbage removal, pest and termite service, security services and all other services and utilities supplied to the Property and any buildings located within the Property, together with any taxes thereon.

**19.2 Interruption of Services**

County is not liable to Manager if any utilities or services, whether or not furnished by County hereunder, are interrupted or terminated because of necessary repairs, installation or improvements, or any other cause beyond County's reasonable control, nor will any such interruption or termination relieve Manager of any of its obligations under this Agreement. County will have no liability to Manager if any utility service is interrupted or terminated by the utility provider or otherwise.

**19.3 Taxes**

Manager is be responsible for payment of all taxes, whether personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to the Property or any use of the Property by Manager.

**20. Entry by County or District**

County or District may enter the Property upon reasonable advance notice to Manager to inspect the same, and to perform ecological, hydrological, flood damage and cultural resources monitoring and assessments. County will use reasonable efforts to not interrupt Manager's operation of the Attractions on the Property.

County at any and all times will have the right to use any and all means which County may deem proper to open gates or doors in an emergency in order to obtain entry to the Property, without liability to Manager, except for any failure to exercise due care for Manager's property or personnel.

**21. Default and Remedies**

**21.1 Default.**

The occurrence of any one or more of the following events constitutes a default and breach of this Agreement by Manager and may result in the termination of the Agreement if actions as indicated in 21.1.6 are not followed:

**21.1.1 Non-Operation of Park** The vacating or abandonment of the construction, operation or maintenance of the Property, or any portion thereof, by Manager, where such failure continues for a period of ten (10) business days after County sends notice of such default to Manager.

**21.1.2 Financial** The failure by Manager to appropriately account for revenues and expenditures or any failure to use Gross Revenues as required in Section 3 above, where such failure continues for a period of ten (10) business days after County sends notice of such default to Manager.

**21.1.3 Insurance** The failure by Manager to maintain insurance policies as set forth above for any time; in which event Manager must immediately cease all operations at the Property until such insurance is obtained. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which event Manager shall, within ten (10) business days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage, including any deductibles or losses within a self-insurance retention.

**21.1.4 Minimum Rent and Additional Annual Fee** The failure by Manager to timely pay the Minimum Rent pursuant to Section 3.1 or the Additional Annual Fee pursuant to section 3.2, where such failure

continues for a period of ten (10) business days after County sends notice of such default to Manager.

**21.1.5 Gross Negligence** Manager or any Partner, employee or agent of Manager acts in a grossly negligent or intentionally wrongful manner and such action results in significant injury to any person, as described in Section 17.5 above, or substantial damage to any improvements on the Property which County is required to repair under the terms of this Agreement.

**21.1.6 Other Covenants** The failure by Manager to observe or perform any other of the covenants, conditions or provisions of this Agreement to be observed or performed by Manager, where such failure continues for a period of thirty (30) calendar days after written notice thereof by County to Manager; provided, however, that if the nature of Manager's default is such that more than thirty (30) calendar days are reasonably required for its cure, then Manager will not be in default if Manager commences such cure within said thirty (30) calendar day period and thereafter diligently prosecutes such cure to completion, provided such cure is completed within one hundred and twenty (120) calendar days of the notice by County.

**21.1.7 Repeated Defaults** More than three (3) material defaults by Manager, as set forth in Subsections 21.1.1 to 21.1.6 above, in any two (2) year calendar period, even if Manager cures the defaults within the applicable cure periods set forth above.

## **21.2 Remedies**

Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement, including without limitation, the right to recover all future Rent, subject to the duty to mitigate.

## **22. General Provisions**

### **22.1 Conflict of Interest**

This Agreement is subject to cancellation pursuant to A.R.S. § 38-511 which is incorporated herein by reference.

**22.2 Waiver/Full and Complete Performance**

The waiver by County or Manager of any term, covenant or condition herein is not a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein. The subsequent acceptance of Rent hereunder by County is not a waiver of any preceding default by Manager of any term, covenant or condition of this Agreement, other than the failure of Manager to pay the particular Rent so accepted regardless of County's knowledge of such preceding default at the time of the acceptance of such Rent. Failure of County or Manager to insist upon strict performance of any provision or to exercise any remedy hereunder is not a waiver by such party of any breach relating to such provision or giving rise to such remedy. No provision of this Agreement will be waived unless such waiver is in writing and signed by the party against whom such waiver is sought to be enforced. Nothing herein requires or obligates County to accept any partial payment of the then current and owed Rent due or partial performance of obligations under this Agreement. County may, in its sole discretion, accept partial payments of amounts due or partial performance of obligations hereunder. Such acceptance of partial payments of Rent due or partial performance of obligations hereunder will in no way be considered or constitute a waiver by County of any failure on the part of Manager to timely pay Rent due or perform the obligations hereunder nor will such acceptance be considered an accord and satisfaction of the Rent then due under this Agreement.

**22.3 Marginal Headings**

The marginal headings and Section titles to the Sections of this Agreement are not a part of this Agreement and have no effect upon the construction or interpretation of any part hereof.

**22.4 Time**

Time is of the essence for this Agreement and each and all of its provisions in which performance is a factor.

**22.5 Successors and Assigns**

The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the successors and assigns of the parties hereto.

**22.6 Recordation**

Any party may record this Agreement in the Office of the Pima County Recorder.

**22.7 Entire Agreement, Amendment and Modification**

This Agreement constitutes the entire agreement between the parties and contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement is not effective or binding on any party until fully executed by both parties hereto.

**22.8 Partial Invalidity**

Any provision of this Agreement which is invalid, void, or illegal in no way affect, impair or invalidate any other provision hereof and such other provisions will remain in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid, void, or illegal provision.

**22.9 Attorneys' Fees**

In the event of any action or proceeding brought by any party against the other under this Agreement, the prevailing party will be entitled to recover its expenses and costs, including its attorneys' fees and expert witness fees, in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable.

**22.10 Approvals**

Unless otherwise provided herein, whenever the approval of a party is required by this Agreement, such approval must be given within thirty (30) calendar days, in writing. If such written approval is not given with such time period, the request is considered disapproved and denied. Unless otherwise noted herein, when the approval or consent of County is required hereunder, it means the written consent of the County Administrator or his designee. The approval of the Board of Supervisors of the County and the Board of Directors of the District are required for any extension or amendment of this Agreement.

**22.11 Notices**

Wherever this Agreement requires or permits notice or demand to be given by either party to the other, such notice or demand must be in writing and given or served either personally or by either regular mail, certified mail (return receipt requested), or by commercial delivery service such as Federal Express or United Parcel Service, addressed to the parties at the addresses specified below and to the following individuals.

Notice will be effective upon personal delivery, three (3) business days after deposit, postage prepaid, in the U.S. mail, or one (1) business day after overnight delivery via commercial delivery service. Either party may change such address by written notice to the other as herein provided.

If notice is to County or District:

C.H. Huckelberry  
Pima County Administrator  
130 W. Congress, 10th Floor  
Tucson, AZ 85701

With copy to:

Tom Moulton, Director  
Economic Development and Tourism  
33 N. Stone Ave., Suite 830  
Tucson, AZ 85701

Chris Cawein, Director  
Natural Resources Parks and Recreation  
3500 W River Road  
Tucson, AZ 85741

If notice is to Manager:

Armand P. Ortega, Manager  
Brian Held, General Manager  
Colossal Cave, LLC  
16721 E. Old Spanish Trail  
Vail, AZ 85641

**22.12 Authority of Manager**

Each individual executing this Agreement on behalf of Manager represents and warrants that he or she has full authority to do so and that this Agreement binds the corporation. If any court or administrative agency determines that County or District does not have authority to enter into this Agreement, County or District are not liable to Manager or any third party by reason of such determination or by reason of this Agreement.

**22.13 Books and Records**

Manager will retain, and will include in any written agreements with Partners, subcontractors or other parties performing services at the Property, a provision requiring that all such parties retain, for inspection and audit by the County and the Arizona Auditor General, all books, accounts, reports, files and other records relating to performance of the Agreement for a period of five years after its completion or if later, until any related proceedings initiated during the five (5) year period are completed. Upon request by County or the Auditor General, a legible copy or the original of all such records will be produced by the Manager at the administrative office of County or the office of the Auditor General.

**22.14 Compliance with ADA**

Manager will comply with all applicable provisions of the *Americans with Disabilities Act* (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The foregoing notwithstanding, Manager is not be required to incur any expense in retrofitting any of the facilities on the Property unless specified within this Agreement or within the attachment, to comply with ADA requirements that were applicable to such facilities but unaddressed by the County, or that materially increase the expense of Manager's operations of the Property.

**22.15 Non-Discrimination in Employment**

Manager agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors, which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, Manager will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

**22.16 Non-Appropriation**

Notwithstanding any other provision in this Agreement, if there are not sufficient appropriated and available monies for the purpose of maintaining County's or District's obligations under this Agreement, County and District will have no further obligation to Manager; provided, however, Manager may continue to occupy the Property for the remainder of the term hereof if Manager performs all of Manager's obligations under this Agreement.

**22.17 Independent Contractor**

The status of the Manager is that of an independent contractor. Neither Manager, nor Manager's officers, agents or employees are considered an employee of County or District or are entitled to receive any employment-related compensation or fringe benefits under the *Pima County Merit System*.

Manager is responsible for payment of all federal, state and local taxes associated with Manager's activities and will indemnify and hold County harmless from any and all liability which County may incur because of Manager's failure to pay such taxes. Manager is solely responsible for Property development and operation.

**22.18 Subcontractors**

Manager will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the Manager is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract creates any obligation on the part of County or District to pay or see to the payment of any money due any subcontractor, except as may be required by law.

**22.19 Legal Arizona Workers Act Compliance.**

Manager hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Manager's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Manager will further ensure that each subcontractor who performs any work for Manager under this Agreement likewise complies with the State and Federal Immigration Laws.

County has have the right at any time to inspect the books and records of Manager and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Manager's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is deemed to be a material breach of this Agreement subjecting Manager to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result,

Manager will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or

retain a replacement subcontractor, as soon as possible so as not to delay project completion.

Manager will advise each subcontractor of County's rights and the subcontractor's obligations, under this Section 22.19 by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that PIMA COUNTY may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Section are the responsibility of Manager. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of Manager's approved construction or critical milestones schedule, such period of delay is deemed excusable delay for which Manager is entitled to an extension of time, but not costs.

**22.20 Exhibits.**

The following Exhibits are incorporated into this Agreement as though fully set forth herein:

- Exhibit A: Depiction of the Park
- Exhibit B: Depiction of the Property
- Exhibit C: Purpose and Scope of Property Activities
- Exhibit D: Maintenance Plan
- Exhibit E: Capital Projects
- Exhibit F: Colossal Cave Preservation Park and Historic District
- Exhibit G: Colossal Cave Mapped Areas

**(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties have affixed their signatures to this Agreement on the date written below.

**MANAGER:**

**Colossal Cave, LLC**

\_\_\_\_\_

Armand P. Ortega

Date: \_\_\_\_\_

**PIMA COUNTY:**

\_\_\_\_\_

Sharon Bronson, Chair  
Board of Supervisors

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

Robin Brigode, Clerk of the Board

**REVIEWED AND APPROVED:**

\_\_\_\_\_

Tom Moulton, Director  
**Economic Development & Tourism**

**APPROVED AS TO CONTENT**

\_\_\_\_\_

Chris Cawein, Director  
**Natural Resources Parks and Recreation**

**APPROVED AS TO FORM:**

\_\_\_\_\_

Tobin Rosen, Deputy  
Pima County Attorney, Civil Division

**PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT:**

\_\_\_\_\_  
Sharon Bronson, Chair,  
Board of Directors

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Robin Brigode, Clerk of the Board

Date: \_\_\_\_\_

**APPROVED AS TO CONTENT**

\_\_\_\_\_  
Suzanne Shields, Director  
Flood Control District

Date: \_\_\_\_\_

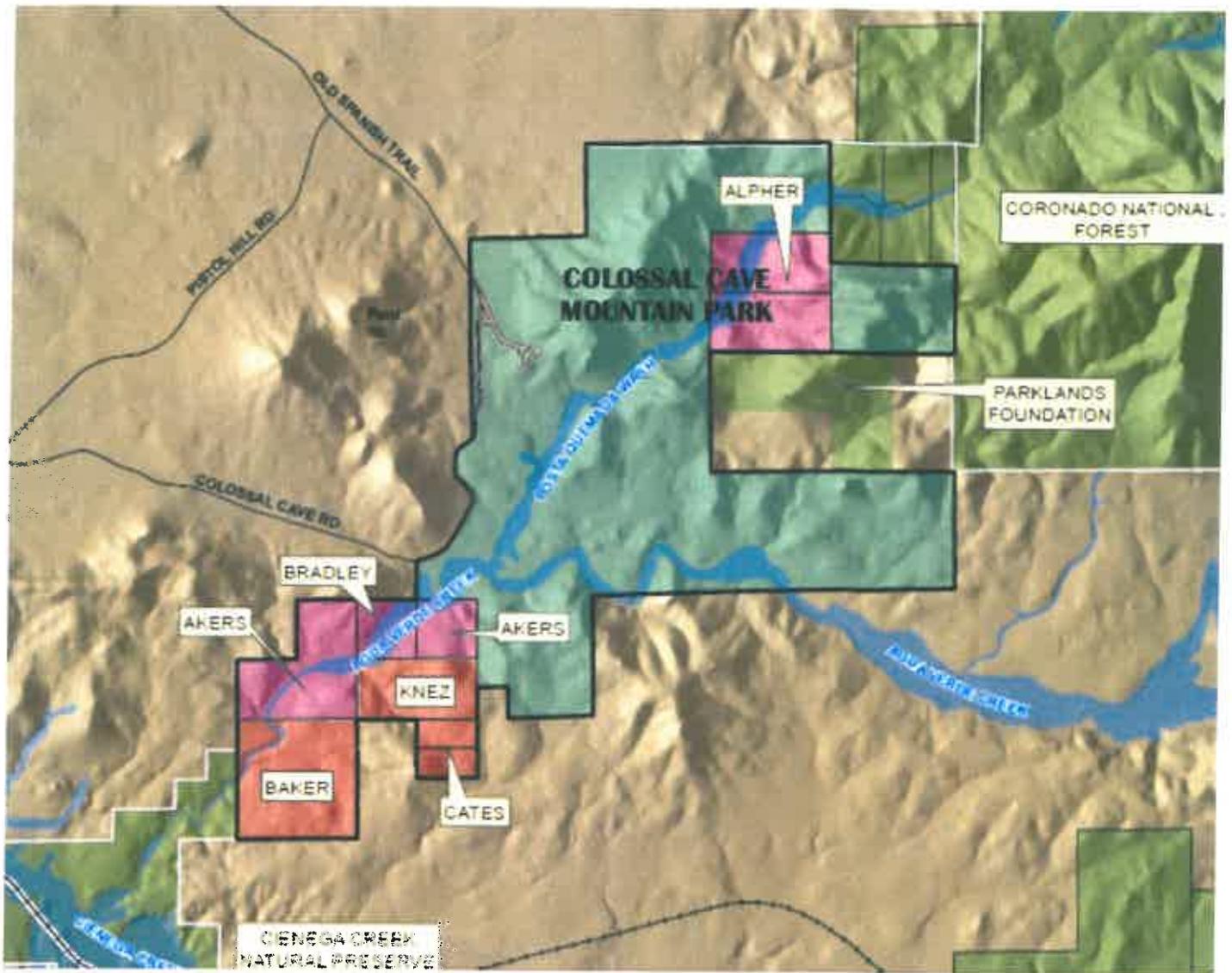
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Tobin Rosen, Deputy  
Pima County Attorney, Civil Division

Date: \_\_\_\_\_

## EXHIBITS

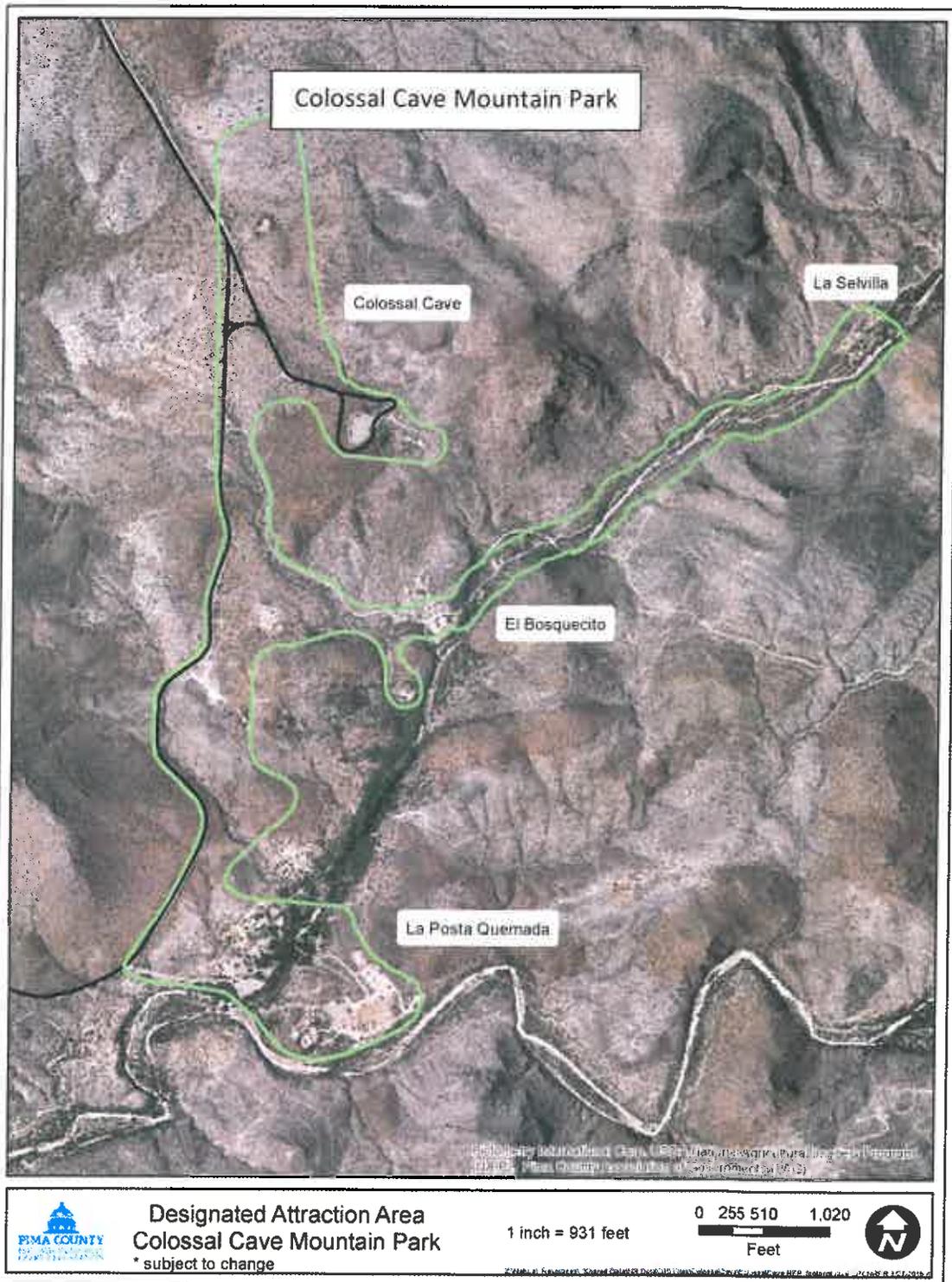
**Exhibit A**  
**Colossal Cave Mountain Park Boundaries**



Map not to scale

**Boundaries for Colossal Cave Mountain Park are indicated in green.  
Actual narrative is being developed and will be added.**

# Exhibit B Property Boundaries



## **Exhibit C**

### **Property Location, Purpose and Scope of Activities**

The Conservation of Colossal Cave Mountain Park and its natural geologic and desert features, is of paramount importance. That said, it is believed that a fair balance can be struck between public enjoyment, commercial use, and protection of the natural geologic and desert systems in the park.

Park attractions exist to promote the conservation of the park, increase awareness of delicate geologic and natural features, and to promote recreation and health opportunities for park visitors.

The following public uses are considered appropriate with reasonable guidelines within the Property. This list may be reviewed and changed from time to time by both parties and approved by the County:

- Cave tours and exploration of Colossal Cave in existing pathways
- Educational venues and events
- The sale of food and beverage including alcoholic beverages (within applicable laws)
- Retail merchandise
- Bicycle and other non-motorized vehicle rentals as long as vehicles are not detrimental to the park
- Stagecoach, Horseback riding on designated trails and other animal use as approved.
- Desert tours including eco-tours
- Overnight lodging and camping
- Rental of facilities for County approved special events
- Souvenir Photography
- Use by specialized groups as long as not detrimental to the Property
- Potential adventure activities and other recreational use as long as not detrimental to the Park and approved by the County
- Picnics, both individual and group Filming and photography

## MAINTENANCE PLAN (PROJECTS)

### Exhibit D

#### Manager will:

1. Commit to spend a minimum of \$60,000 annually (excluding salaries) in park maintenance projects. County will participate in prioritizing the maintenance projects.
2. Maintain historic buildings in accordance with the Secretary of Interior's Standards.
3. Require staff to pass a verbal quiz on the Secretary of Interior's Standards.
4. First reach out to Pima County and then to the SHPO for appropriate guidance for all work that involves significant historic features and material.
5. Within 90 days of our contract start date, our corporate Chief of Maintenance will tour the facility with our architects, Pima County representatives (if requested) and, if necessary, preservation architects and engineers
6. Implement and maintain a Computerized Maintenance Management Software (CMMS). Both Routine and Cyclic crucial maintenance items will be programmed into our CMMS, by asset, and the CMMS will generate reminders and appropriate work orders for staff. Our CMMS will be designed to generate "warnings" when work orders are inputted for significant historic features.
7. Submit an annual maintenance report to Pima County which will include a summary of work completed in the previous year, including amounts invested and budgets and planned work for the next two years. An annual inspection report by the local Fire District shall be included within the maintenance report.
8. Establish weekly and monthly spot checks to ensure that these wires are safe, grounded, and do not pose a threat.
9. Maintain all machinery systems at least in accordance with manufacture recommended routines (replacement of required filters etc.).
10. Initiate thermal infrared imaging of potential "hot spots" to make sure that electrical junctures are not in danger of fire.
11. Implement routine maintenance that will entail the monthly and quarterly check of alarm systems, and appropriate placement and maintenance of fire extinguishers. Included shall be all public exit signs.
12. Implement at least quarterly inspections of all exterior woodwork (historic windows, vigas, etc.) with an emphasis on termites and environmental damage on the south facing walls. Repair and replacement as necessary.
13. Implement at least quarterly inspections of drainage systems, gutters, and areas where water might become pooled and enter the buildings.
14. Implement quarterly spot checks of all roofs, clearly of debris, and an annual professional roof inspection.
15. Use moisture monitor equipment in areas of suspected leaks or moisture penetration.
16. Implement an Integrated Pest Management System (IPM) which will require the monitoring of potential entry points and animal nesting areas that could breach the building seal, or cause moisture to breach the seal
17. Included shall be an IPM program for all insects and noxious weeds.
18. Evaluate the condition of all roofs within 60 days of contract start date.
19. Implement daily spot checks and cleaning of debris and trash (to avoid animal foraging that can be detrimental to the buildings).
20. Implement monthly checks of high traffic areas that are becoming worn and could be in need of replacement (rock flooring under the CCC cave patio, trails, etc.) as well as areas that can pool water and debris.
21. Use seasonal protective mats in order to keep debris from being tracked into historic buildings or the cave.
22. Implement monthly checks of potential animal nesting areas.
23. Implement a post-storm spot check plan to inspect buildings, components, and potential floodways to identify potential danger to buildings.
24. Inspect and clean "non-public" areas looking for evidence of animal and insect activity.

25. Avoid "random acts of storage" which can overload historic buildings and act as both nesting areas and fire hazards.
26. Inspect at least quarterly, internal woodwork, with special care taken on woodwork (large beams in the retail area) and finishes exposed to UV sun through the windows as well as potential insect termite damage.
27. Routinely clean historic finishes with nonabrasive, non-reactive cleaners.
28. Paint internal walls routinely.
29. Monitor high customer foot traffic areas for signs of wear and tear, food spills etc. Repair and replacement as appropriate.
30. Implement daily cleaning and inspections of all public areas.
31. Establish 30-day training logs for our maintenance manager and all staff involved in maintenance. The training logs will be job- and area-specific.
32. Create a Preservation and Maintenance Manual. The GM and maintenance manager will lead a training session to review the manual.
33. In each of the first three years of the contract, require and pay for our maintenance manager to attend at least one maintenance-related or certified AIA class such as the National Preservation Institute's: "Cultural and Natural Resources: An Integrated Management Strategy" or "Preservation Maintenance: Understanding and Preserving Historic Buildings."
34. Require and pay for our General Manager and maintenance manager to attend either general industry or construction certification classes for greater situational and safety awareness. It is further recommended that the maintenance manager become a certified pest control operator pursuant to Arizona Department of Agriculture requirements. Pima County will provide assistance and oversight with regards to certification.
35. Retain an independent preservation expert.
36. Develop custom training materials that are specific to the CCC buildings.
37. Proactively find like-kind materials before they are needed.
38. Establish an Approved Cleaning Materials list. Maintain an on-site MSDS control center for all stored chemicals.
39. Never applying untested material to the building.
40. Retain a Cave Consultant with County approval as needed to address cave rehabilitation, conservation, safety and tour operations.

## Exhibit E

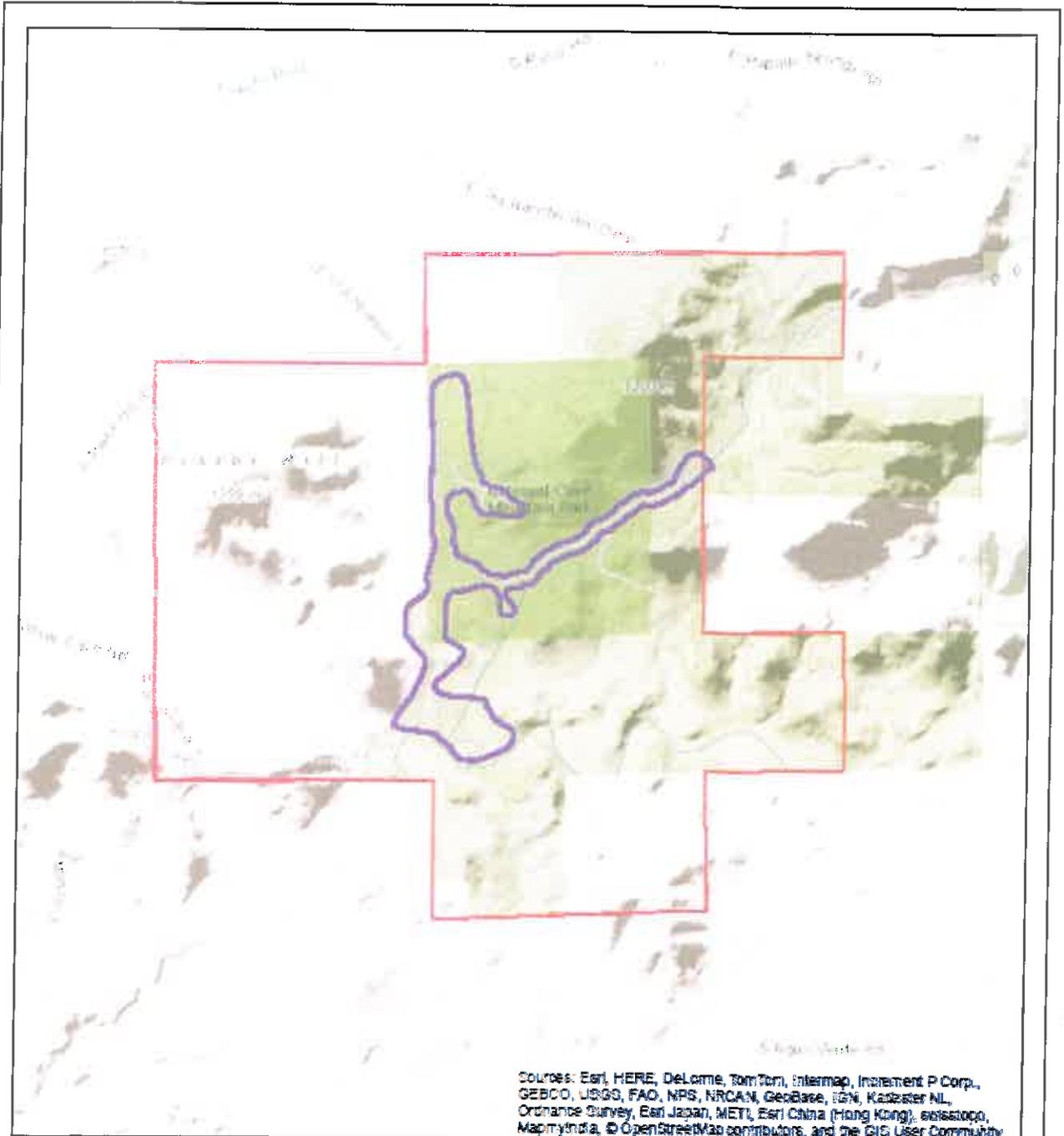
### New Renovation Projects and Capital Improvements

Manager is responsible for completing mutually acceptable new site facility projects and rehabilitation plans within the first ten (10) years of operation. Projects contained below are only a sampling of the types of Projects under consideration. All Projects must be approved by the County and possible other agencies such as SHPO before proceeding. Projects may be added to or subtracted from this list with both parties consent.

Project Name	Description
<b>Upgrade retail at cave area</b>	Invest at least \$250,000 in the cave area retail shop. The dignity of the building, the overall look of the store, and the themes and interpretation it presents should create a pleasant memory for visitors and should be a source of pride for locals, whether they make a purchase or not.
<b>Introduce limited food service at cave area</b>	<ul style="list-style-type: none"> <li>• Install a food merchandiser either in the cave retail store or outside in a dedicated food service space described below. The food merchandiser will be stocked daily (and more often if needed) with the grab and go menu items.</li> </ul>
<b>Create food preparation area</b>	<p>To support our proposed grab and go and hot food menus, we will need to install a small (~110 sf) food preparation area for the assembly of food. Candidate places to build this small preparation area include:</p> <ul style="list-style-type: none"> <li>• The two-story CCC building in the cave area,</li> <li>• The small building between the retail building and the two-story CCC building in the cave area,</li> <li>• The basement of the retail building in the cave area, or</li> <li>• The ranch house.</li> </ul> <p>The exact location of the food preparation area will be determined in conjunction with Pima County and the County Health Inspector.</p>
<b>Upgrade patio at cave area</b>	To finish this space and complete its invitation to relax in a historic desert courtyard, we commit to furnish it with at least a \$25,000 investment in sturdy, outdoor benches and tables and chairs, umbrellas, a mist system, greenery, and Wi-Fi.
<b>Implement photo opportunity at the cave area</b>	We propose to expand the use of the cave patio area to allow for souvenir photos. We propose to invest in the 8' x 8' Smile Lounge photo booth, <a href="http://www.SmileLoungePhotoBoothNY.com">www.SmileLoungePhotoBoothNY.com</a> (or equivalent) and/or develop a process to take photographs in the cave.

<b>Adventure Activities</b>	If acceptable to Pima County AND visitation increases to at least 60,000 and it is economically feasible to achieve an acceptable return on investment, install a rope course and/or zip line attraction.
<b>Campsite improvements</b>	Replace current aged and broken fire rings / grills with brand new ones that are more attractive and upgrading picnic tables. Increase size of restrooms and potentially add flow efficient showers
<b>Overnight lodging improvements</b>	Conduct a feasibility study to assess if constructing guest rooms in the ranch house and building an RV park with cabins near the current ranch area is financially viable. If so, develop a plan to implement the financially viable components of this plan.
<b>Improve and Development of trails</b>	County will take the lead on the development of any new trails in collaboration with Manager.
<b>Preservation and maintenance plan</b>	Implement a multi-year "Preservation and Maintenance Plan"

**Exhibit F**  
**Colossal Cave Preservation Park Historic District Boundary**  
**National Register of Historic Places**



Sources: Esri, HERE, DeLorme, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), Swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community



**PIMA COUNTY**  
SUSTAINABILITY & CONSERVATION

Colossal Cave Preservation Park Historic District (NRHP Boundary)

Colossal Cave Mountain Park

Property Boundary

1 inch = 2,500 feet



0 0.5 1 Miles



N

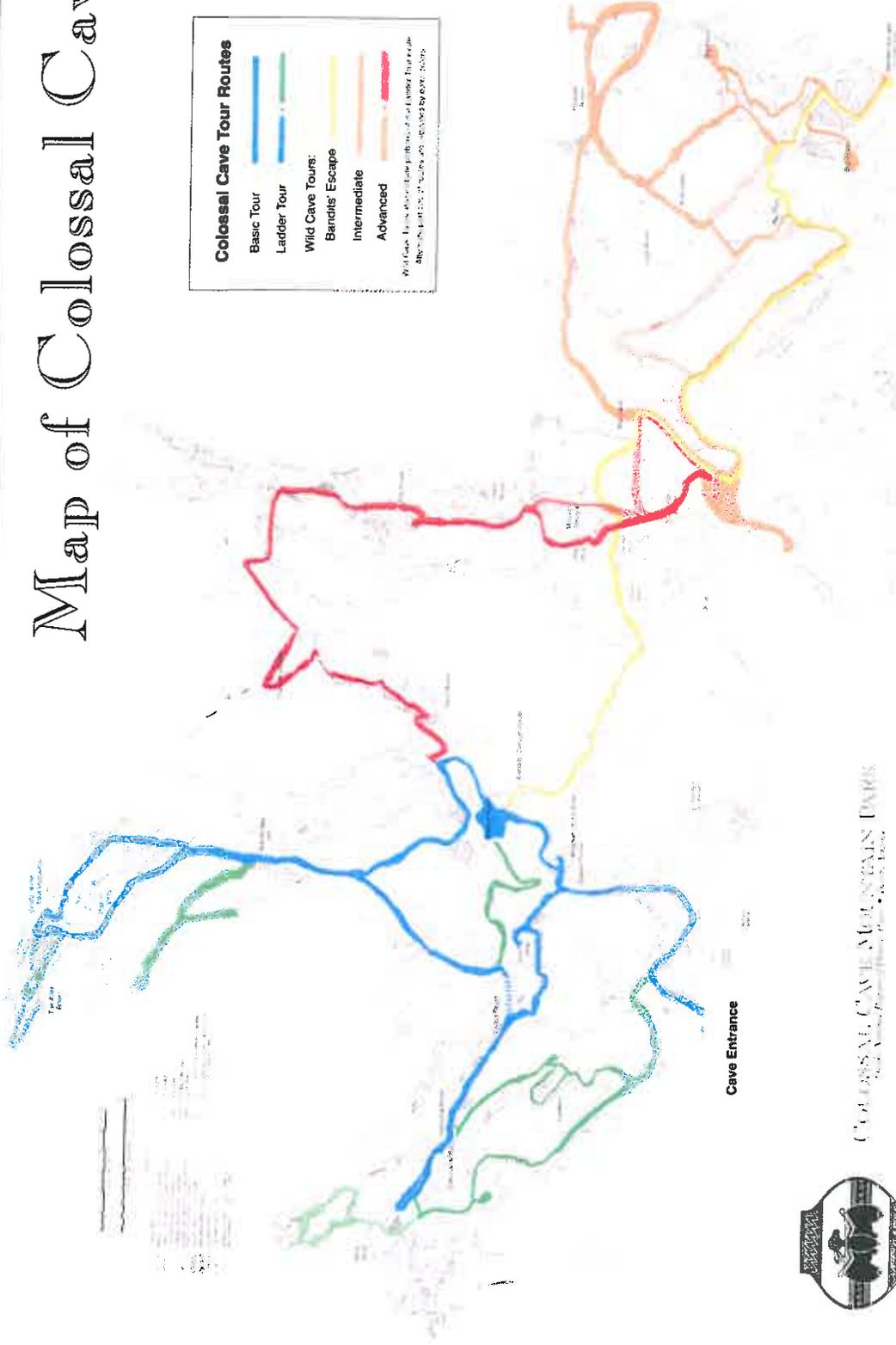
Exhibit G

# Map of Colossal Cave

**Colossal Cave Tour Routes**

- Basic Tour
- Ladder Tour
- Wild Cave Tours:
  - Bandits' Escape
  - Intermediate
  - Advanced

Wild Cave Tours are not recommended for children. All tours are subject to change without notice.



Colossal Cave National Monument