

COB - BOSAIR FORM

08/15/2025 11:48 AM (MST)

Submitted by Julie Burch (Julie.Burch@pima.gov)



Welcome to the [Board of Supervisors Agenda Item Report \(BOSAIR\)](#) Form.

This form is used to submit agenda items for Board of Supervisors consideration, including contracts, awards, grants, amendments, and other official actions.

All fields are required. Enter N/A if not applicable. For number fields, enter 0 if not applicable.

Record Number: CT AT CT2500000045

Award Type: Contract

Requested Board Meeting Date: 09/02/2025

Signature Only:

NO

Procurement Director Award / Delegated Award: • N/A

Supplier / Customer / Grantor / Subrecipient: Colossal Cave, LLC

Project Title / Description: Amended and Restated Operating Agreement for the Operation of Show Cave and Other Facilities Within Colossal Cave Mountain Park

Purpose: This Restated Agreement will replace the existing agreement for the operation of Show Cave, picnic areas, campgrounds, and ranch areas with an emphasis on benchmarked capital improvements during the term of the Agreement. Operator agrees that it will, at its own expense and for the benefit and recreation of County's residents and visitors; operate, manage, repair and maintain, promote, improve, and develop the park under and subject to the terms of this Agreement.

Procurement Method: Revenue Contracts: This Revenue Contract is a non-Procurement contract and not subject to Procurement rules.

Procurement Method Additional Info: N/A

Program Goals/Predicted Outcomes: Goals include the continued operation and rehabilitation of infrastructure and Show Cave attraction and the development of new activities with emphasis on the historical scope of the property. Pima County residents and visitors will continue to access this significant educational and recreational resource.

Public Benefit and Impact: Operator will continue to operate Colossal Cave Mountain Park, a National Historic Register site featuring a unique Show Cave, campgrounds, equestrian facilities, and hiking trails which includes unique paleontological, archeological, recreational, and cultural assets as a public park for County residents and visitors to the area.

Budget Pillar • Conservation, sustainability & climate resiliency

Support of Prosperity Initiative: C-S 2. Address Climate Resilience and Environmental Justice

To: COB, 8-19-25(1)
Vers: 0
pgs: 28

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Provide information that explains how this activity supports the selected Prosperity Initiative

The Colossal Cave Mountain Park is listed on the National Register of Historic Places and is a designated Priority Cultural Resource in the County's Sonoran Desert Conservation Plan. The restated agreement outlines Operator's obligation to perform all management duties with an emphasis on cultural, archeological, paleontological, and environmental preservation and protection in all aspects of the park operations.

Metrics Available to Measure Performance:

Documented capital improvements to the park and facilities with performance benchmarks stated in the Agreement, year-end financial statement and balance sheet, bi-annual independent audit and financial report covering the two previous fiscal years, bi-monthly oversight meetings with jurisdictional County departments, customer service feedback, and attendance increases.

Retroactive:

YES

Retroactive Description:

Delay in submission due to Operator's review and approval of agreement.

Contract / Award Information

Record Number: CT AT CT2500000045

Document Type: CT

Department Code: AT

Contract Number: CT2500000045

Commencement Date: 09/01/2025

Termination Date: 08/31/2035

Total Expense Amount:

\$0.00

Total Revenue Amount:

\$262,793.30

Funding Source Name(s) Required: N/A

Funding from General Fund?

NO

Contract is fully or partially funded with Federal Funds?

NO

Were insurance or indemnity clauses modified?

NO

Vendor is using a Social Security Number?

NO

Department: Attractions & Tourism

Name:
Joey Schwanz

Telephone: 520-724-7346

Department Director Signature: Diane Frisch Date: 8/15/2025

Deputy County Administrator Signature:  Date: 8/18/2025

County Administrator Signature:  Date: 8/18/2025

PIMA COUNTY DEPARTMENT OF ATTRACTIONS & TOURISM

PROJECT: Amended and Restated Operating Agreement for Colossal Cave Mountain Park

OPERATOR: Colossal Cave, LLC

REVENUE CONTRACT NO.: CT2500000045

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

This Restated Agreement for the Operation of the Colossal Cave Mountain Park ("Agreement") is made and entered into by and between Pima County, a political subdivision of the State of Arizona ("County"), and Colossal Cave, LLC, an Arizona limited liability company ("Operator"), to commence on September 1, 2025 for the purpose of operating Colossal Cave, a historic show cave attraction, and other activities within defined areas located within Colossal Cave Mountain Park.

1. Background and Purpose.

- 1.1. County is the owner of the real property more particularly described and depicted in **Exhibit A** (7 pages) and **Exhibit B** (1 page) (the "**Property**") and known as Colossal Cave Mountain Park. Operator is a Limited Liability Company organized under the laws of the State of Arizona.
- 1.2. County is authorized by A.R.S. § 11-933 to enter into agreements for the operation of county public parks, as defined in A.R.S. § 11-931.
- 1.3. Under the prior agreement, and amended once, original Operator agreed to develop, operate, improve, and maintain the Property as a public park area for the rest, relaxation, educational benefit, and recreation of the inhabitants, tourists, and visitors of Pima County since August 17, 2015.
- 1.4. Colossal Cave Preservation Park Historic District is listed in the National Register of Historic Places, and County is mandated to maintain the historic integrity of this district and its contributing properties.
- 1.5. The Parties now wish to enter into a new Agreement to continue to allow the current Operator 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. Original Agreement. As of the Effective Date, this Agreement will supersede and replace the Original Agreement and Amendment in its entirety.

3. Term and Renewal. Regardless of the date that Parties approve and execute this Agreement, the term of this agreement will commence on September 1, 2025, and will continue for ten years, ending on August 31, 2035. During this period, County will annually evaluate Operator's performance of the implementation of the Capital Project and Improvements Plan (**Exhibit C**, 1 page). Provided Operator is not in default of any provision of this Agreement, the term of this Agreement may be renewed and extended an additional ten-year term and two additional five-year terms. Operator must provide County with not more than eighteen months, nor less than one-year advance written notice to County of its election to so extend the term.

4. Lease Rate. Operator shall pay County an annual lease rate in the amount of \$24,000 payable

in monthly payments of \$2,000, commencing on September 1, 2025 and payable on the first of each month thereafter.

- 4.1. **Rent Escalation.** Beginning one year after the Commencement Date of the Agreement and every one year thereafter during the term, the annual lease rate shall be increased by an amount equal to two percent of the immediately preceding annual lease rate.
5. **Authorization to Operate Property.** Pursuant to A.R.S. § 11-932, and in consideration of the mutual promises and covenants set forth in this Agreement, County grants Operator the exclusive right to operate the Property as a public park known as the Colossal Cave Mountain Park. Operator agrees that it will—at its own expense and for the benefit and recreation of County's inhabitants, tourists, and visitors—operate, manage, repair and maintain, promote, improve, and develop the Property under and subject to the terms of this Agreement.
6. **Operator's Performance Standards.** Operator must comply with the following performance standards during the Term of this Agreement:
 - 6.1. **Permitted Activities.** County hereby grants to Operator 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. Operator agrees that it will operate, renovate, develop, manage, and maintain the Property under the terms and conditions set forth herein. The scope of Operator'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.
 - 6.2. **Conduct of Activities on the Property.** Operator will determine the quantity and duration of cave tours, and special events on an annual basis. Operator will conduct its activities and ensure that its employees, persons using right of way routes to access adjacent properties, and all permissible users of the Property conduct their activities in a civil and professional manner and in compliance with applicable standards of practice for recreational and scientific use of caves, natural resource park facilities, and federal, state and local laws. Operator shall be responsible for all security and safety relating to the Property and shall provide such security and safety features sufficient to adequately protect the Property and persons at the Property from damage or bodily injury.
 - 6.3. **Public Safety.** Operator will plan and provide for public safety, emergency response (including wildland fire response), and access for visitors, CCMP staff, and researchers during visitation at Colossal Cave and all areas within CCMP. Operator will develop a comprehensive CCMP safety plan for review and approval of Pima County within the first six months of this Agreement.
 - 6.4. **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 County, and County will respond to any request for approval within thirty business days after Operator 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 calendar days in advance and may be subject to additional special use or right-of-entry permits. Failure of County to timely respond to activities outside the footprint will NOT be considered approval.
 - 6.5. **Hours of Operation.** Operator recognizes the public-service nature of this Agreement and agrees to operate the Property and keep the Property open to provide public recreation

and full service each day. Hours of operation, holiday closings, or special closings will be subject to County approval based on reasonable public demand and business activity. Operator must ensure that the Property is adequately staffed when open to the public.

- 6.6. **Admissions and Fees.** The Property will be open for the use of the public without discrimination as to race, sex (including sexual orientation and gender identity and expression), age, national origin, religion, political affiliation, or physical disability. Any admission fees that Operator charges to the general public will be in an amount that is reasonable and used to support the operations of Colossal Cave Mountain Park. Operator may adjust fees for admission to the show cave, museum, and other attractions to reflect market conditions with sixty day written notice to County Attractions & Tourism Department
- 6.7. **Assignment/Concessions.** Operator may not either voluntarily or by operation of law, assign or transfer its rights or obligations under this Agreement to any other person or entity. Operator may, in the normal course of business, enter into concession agreements for the operation of specific aspects of the Colossal Cave Mountain Park, such as food concessions, souvenirs, campground operation or trail rides and may hire contractors to perform work such as construction and landscaping. Operator may not delegate its overall responsibility for all operations of the Colossal Cave Mountain Park without County's prior written consent, which may be withheld at the reasonable discretion of County, and no delegation of duties or hiring of contractors will in any way relieve Operator of its responsibilities and obligations under this Agreement.
- 6.7.1. *Food.* If food is sold to or consumed by members of the public, Operator must obtain all applicable food permits, and Operator and its contractors or concessionaires must comply with all Pima County health regulations.
- 6.7.2. *Alcohol.* Alcoholic beverages may be sold and consumed at the Property and be in compliance with all State Liquor Board licensing requirements. Operator must obtain liquor liability insurance in the amount provided in Section 10.1.2 and naming County as additional insured. Operator may use Pima County Series 5 Government Liquor License with approval by Pima County Attractions & Tourism Department and is responsible for all costs, permitting and rules & regulations. County may withdraw use of license for violations.
- 6.7.3. *Subcontracts.* Operator may not contract with any third party for trail rides, food service, or campground operation without the prior written consent of the County Administrator or their designee.
- 6.7.4. *Subcontract Copies.* At County request, Operator will provide County with copies of any contracts and concession agreements it has entered into with respect to the Property.
- 6.7.5. *Contracts Greater than One Year:* All subcontracts with third parties for the operation of concessions or other activities on the Premises which have a term of more than one year shall be subject to the prior approval of the Board of Supervisors.
- 6.8. **Special Events**
- 6.8.1. *Definition.* For purposes of this Agreement, a "Special Event" is an event that is beyond the normal scope of the operation of the Property, including any event, whether public or private, that (a) is expected to attract more than one hundred people; (b) involves a cash bar or other sales of alcohol; or (c) may increase risk of injuries to persons at the Property. Special Events do not include routine meetings and functions.

- 6.8.2. *Notice; Traffic & Safety Plans.* Should Operator desire to conduct a Special Event with a set arrival time that exceeds one hundred people, Operator must give County Attractions & Tourism Department a thirty day advance written request with which County may impose reasonable traffic, safety and noise restrictions on the Special Event to promote the health and safety of the participants and of the general public and County may designate approved parking areas.
- 6.8.3. *Liquor Licensing & Special Events.* All service or sales of alcoholic beverages during any special event held on Property shall be in compliance with all applicable State and local laws or ordinances.
- 6.9. **Accounting Records; Audits; Annual Unaudited Financial Reports, Budget, Oversight Meetings.** In connection with the operation of the Property, Operator will keep and maintain accounting records consistent with generally accepted accounting principles (GAAP). Such records shall be open for inspection and audit by duly authorized representatives of County at all reasonable times. Manager shall provide County during the term of this Agreement:
- 6.9.1. *Annual Unaudited Financial Reports.* In addition to any required audited statements, Operator must give the County Administrator or their designee a year-end balance sheet and a year-end statement of income and expenses prepared in accordance with generally accepted accounting principles. The financial statements must be delivered by January 31 each year and must show all revenues from operation of the Property and all expenses incurred in connection with the operation of the Property for the previous fiscal year. Operator will cause any other organization that utilizes the Property on an annual basis to give County an annual financial report within one hundred twenty days after the end of the user's fiscal year end.
- 6.9.2. *Audited Financial Statements.* Every two years Operator will engage a qualified independent accounting firm to perform an audit of Operator's financial statements covering the two most recent fiscal years (January 1 to December 31) of operations. Unless otherwise agreed to by the Parties, Operator will provide the County Administrator or their designee with the financial statements and opinion within ninety days after the end of the two-year reporting period.
- 6.9.3. *Additional Audits.* At any time upon written notice to Operator, County may, for cause, require Operator to provide a program-specific or financial audit ("For-Cause Audit") within one hundred twenty days of request. County's written notice will specify the period to be covered by the audit, the type of audit required, and the time for completion and submission of the audit. All audits provided under this section must be performed by a qualified independent accounting firm. Such audits must include any response Operator wishes to make concerning any audit findings. A For-Cause Audit is one based upon a reasonably specific concern, complaint, or allegation discovered by, or made to, County.
- 6.9.4. *Monthly Oversight Meeting.* Operator will participate in a regularly scheduled monthly oversight meeting with representatives of County's administering departments with jurisdiction over the Property to discuss ongoing operation, maintenance, and improvements at the Property.
- 6.10. **Compliance with Laws.** Operator may not use the Property, or permit anything to be done in, on, or about the Property, that in any way conflicts with any federal, state, or local law, statute, ordinance or governmental rule or regulation.
- 6.11. **Volunteers.** All volunteers working at the Property under the direction of Operator will execute a release of liability in a form reasonably acceptable to County prior to doing any

work at the Property. Operator will deliver a sample of the release to County in the same manner as the giving of other notices under this Agreement.

- 6.12. **Utilities Services and Taxes.** Except as specifically provided below, Operator will pay for all utility services for operation of the Facility including gas, heat, light, power, sewer charges, telephone service, garbage removal, pest and termite service, security services, and internet technology services as needed to conduct business.

6.12.1. *Low-water Use Fixtures.* Operator 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.

6.12.2. *Service Interruptions.* County has no liability to Operator if any utilities or services, whether or not furnished by County, are interrupted or terminated to the Property for any cause beyond County's reasonable control, and no such failure, interruption or termination will relieve Operator of its obligations, including the payment of rent, under this Agreement during such service disruption.

6.12.3. *Wells.* County currently operates and maintains two wells that provide water to the Property, and County will be responsible for maintenance of the wells. One of the wells is a cistern and is subject to drying at any time. County is not responsible for replacing the water source if it goes dry. Should a well or booster/distribution pump go down and need repairs, County is not responsible for supplying water to the Property serviced by the well while repairs are being made. Operator will be responsible for the operation and maintenance of the distribution system from the wells to the rest of the property. Operator acknowledges that the Property has limited water resources and County does not guarantee or warrant that the water delivered will be sufficient to meet Operator's expanded needs.

- 6.13. **Signs.** Operator may affix and maintain upon the Premises such signs relating to the services provided on the Premises as Operator deems appropriate; provided, however, if such signs are visible outside of the Premises, such signs must first receive the written approval of the County Administrator or their designee as to the type, size, color, location, copy nature, and display qualities. All signs will at all times comply with the Pima County Sign Standards and shall be installed and maintained at Operator's sole cost. Operator shall pay all costs for construction, erection, installation, maintenance, and repair of any sign either currently in existence or to be erected or installed or otherwise placed on the Premises, except that County is responsible for any signs on the Arizona Trail. Operator, shall through coordination with the County Administrator or their designee, identify the Premises as belonging to Pima County. Operator shall acknowledge the contribution of County in providing the Premises to Operator in Operator's annual reports and appropriate publications.

- 6.14. **Duty to Maintain.** Except as specifically set forth below, Operator will, at its expense, maintain each of the Buildings and their respective Facades, as well as the Property and all improvements, in a good and sound state of repair in accordance with the Secretary of Interior Standards for the Rehabilitation of Historic Buildings, and County and Arizona State Historic Preservation Office guidelines for the historic district in which the Property is located so as to prevent the deterioration of the Facades or any portion thereof; and to prevent the intrusion of new improvements, walls, fences, landscaping or fixtures which substantially modify the Property and its associated historic values, and are deemed to be not in accordance with the Standards delineated below (see Section 6.18 Cultural Resources & Heritage Preservation). This includes maintaining and repairing all appliances, furnishings, landscaping, irrigation systems, fencing, parking lots, parking lot lighting, doors, window casements, glazing, plumbing, pipes, electrical wiring, lighting

fixtures and conduits, fire suppressant systems and related equipment, heating and air conditioning systems, foundations, walls (exterior and interior), sidewalks, corridors, roofs, pest control, and sewer, water, and exterior electrical lines. Operator will, upon expiration or sooner termination of this Agreement, surrender the Property to County in good condition and have the site professionally cleaned. Operator shall be responsible for clean-up of illegal dumping on the Property within 10 days of discovery either by Operator or County.

6.14.1. **Damage by County.** If the Property is damaged as a result of negligent or intentionally wrongful conduct of County, its agents, employees, or contractors, County will repair the damage at its own expense.

6.14.2. **County Right to Cure.** If Operator fails to perform its maintenance and repair obligations, Operator will be in default under this Agreement, and County, without notice, may, but will not be obligated to, perform Operator's obligations. Operator will, within thirty days of receiving an invoice from County, reimburse County for the cost of the work, plus interest at a per-annum rate of 12% from the time the cost was incurred by County until paid. Any such default by Operator will not be considered cured until Operator has fully paid County.

6.14.3. **Liens.** Operator will keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Operator.

6.15. **As-Is Condition.** Operator accepts the Property and all improvements thereon in "AS IS" condition with no warranties of any sort being expressed or implied by County. Operator is responsible for assuring that the architectural, historic, and cultural features of the Property will be retained and maintained throughout the duration of this contract in their current or better condition (as referenced in **Exhibit C**) for conservation and preservation purposes and to prevent any use or change of the Property, except as may be specifically permitted herein, that will materially impair or interfere with the historical integrity and significance for which the property is listed on the National Register of Historic Places.

6.16. **Cave and Karst Management Plan & Resource Protection.** County will provide at its expense to Operator a modified Cave and Karst Management Plan as guidance to provide the greatest preservation of the show cave and karst resources, perpetuate a high-quality visitor experience, and maintain cave ecosystem health while minimizing adverse impacts.

6.16.1. *Habitat Management.* Cave resources and surrounding lands are habitat for multiple species identified in the Sonoran Desert Conservation Plan. Operator will conduct activities in accordance with the Endangered Species Act (16 U.S.C. § 1531) and other laws and regulations that protect habitat for threatened, endangered, proposed, and sensitive species that utilize cave resources in CCMP.

6.16.2. *Cave Safety and Ethics.* Operator should conform, at all times, to accepted caving safety and ethics conventions espoused by the National Speleological Society and other recognized caving organizations. Operator recognizes that caves can present a variety of hazards including pits and crevices (drop offs); squeezes (tight areas); unstable or loose rock; and uneven or slippery surfaces. Operator will develop and implement a cave safety plan to be included in the CCMP safety plan that addresses practices to respond to and reduce hazards.

6.16.3. *Cave Cleaning.* Operator will follow the standardized cleaning protocol for maintaining hygiene and safety within Colossal Cave that applies to all designated pathways, handrails, and accessible areas within the cave (**Exhibit E**, 2 pages). The protocol prescribes routine maintenance and sanitation actions while minimizing environmental impact. Operator recognizes that recreational use and human visitation within Colossal Cave can impact cave formations and microsites over

time. Operator will educate tour participants and other visitors in ways to minimize these impacts within the cave by remaining on established pathways, avoiding touching cave formations, and keeping food and beverages out of the cave.

- 6.16.4. *Cave Rescue*. Should a cave rescue be needed, Operator recognizes that there is specific expertise, equipment, and established protocols that must be followed. Colossal Cave has been evaluated by experts in cave rescue. County has completed a pre-plan as an appendix to the Cave and Karst Management Plan, which Pima County will provide to Operator by Pima County upon the parties executing this Agreement. Operator should keep a copy of the rescue pre-plan in the gift shop and make it available to any responding rescue team. Operator will submit an operational rescue plan within one year that includes a response to onsite needs for communication, cached emergency equipment, minor modifications of trail barriers, addition of an AED, and other actions included in the rescue pre-plan.
- 6.16.5. Operator acknowledges that cave and karst resources are not isolated features but are physically and hydrologically integrated within the landscape. Thus, Operator must maintain and preserve cave and karst resources through considering potential impacts such as ground disturbance, invasive plant incursion, fire, and pollution occurring within the watershed.
- 6.16.6. Operator will not conduct, or permit any other person to conduct, on the Property, mining, quarrying, or other activities that would impact the Property's cultural or natural resources (see Section 6.18 Cultural Resources & Heritage Preservation).
- 6.16.7. Operator will not permit the hunting or trapping of wild birds or animals on the Property, nor the destruction or removal of native plants, shrubs, trees, or grasses, except with prior written approval of County. Operator will avoid or minimize activities that attract native and nuisance wildlife.
- 6.16.8. Operator will not discharge waste, byproducts, or materials that might result in harm to wildlife, cave or karst resources, or to human water supplies onto the Property or into water channels. Operator will take all reasonable measures to protect the scenic aesthetic values of the area and prevent soil erosion and gulying that might be caused by construction or improper use of resources.
- 6.16.9. Operator will secure the Property and take all necessary steps and precautions to prevent vandalism and other damage to all buildings, exhibits, and other personal property stored at the Property.
- 6.16.10. Operator will take all reasonable measures to discourage disorderly conduct at the Property and will call appropriate law enforcement officers when necessary and assist and cooperate in subsequent prosecutions.
- 6.16.11. Operator will take all appropriate actions to prevent fire damage to the Property and any improvements, collections, and natural resources at the Property, including but not limited to complying with approved building and electrical wiring codes and with area closures and use restrictions imposed by any governing jurisdiction.
- 6.16.12. In addition to the requirements of Section 8 below, Operator will comply with all present and future laws and regulations regulating the environment, hazardous or toxic waste, ambient air, groundwater, surface water, and land use.
- 6.16.13. Operator will work with County departments and take all reasonable measures and appropriate action to manually or mechanically control and eradicate invasive plant species on the Property.
- 6.16.14. Operator, including its employees and volunteers, will take all reasonable measures

to protect cave and karst resources both on the Property and on non-leased areas of Colossal Cave Mountain Park. Operator shall not disclose locations of any other caves (except show cave), either on or off the Property to any visitors, contractors, concessionaires, or others, unless specifically authorized by County's Director of Conservation Lands and Resources Department ("CLR"). There will be no disposal of wastes, chemicals, or other compounds within cave(s), over known karst features, or in shallow groundwater areas. Operator will coordinate with CLR any actions involving chemicals, such as pavement sealing, infrastructure repairs, and control of invasive species which could result in chemicals seeping into underground cave and karst resources. CLR will then determine whether the activity can occur and any needed measures that Operator will take to protect cave and karst resources.

- 6.16.15. Operator has no right to manage, enter, or authorize others to enter, explore, monitor or research any cave or karst features on or off the Property within Colossal Cave Mountain Park other than the currently mapped areas of Colossal Cave (show cave) itself as depicted in "**Exhibit D**" (1 page). All research activities on the Property including within this mapped area of Colossal Cave require a research permit from County issued to the principal investigator. Research activities on the Property are limited to those which will not have a material adverse impact on the karst features and flora and fauna of Colossal Cave and other known caves or karst areas.
- 6.16.16. If while managing the Property, Operator or any employee or agent of Operator becomes aware of a karst or cave feature, or natural or cultural feature previously unknown to County either on or off the Property within CCMP, Operator will within two 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 or their designee. Operator 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 their designee and in compliance with all applicable laws, rules and regulations.
- 6.16.17. Operator will implement a decontamination protocol for white-nose syndrome for Colossal Cave visitors who tour the show cave and ensure any equipment used on ladder or wild cave tours are only those provided by Operator. A written white-nose syndrome decontamination procedure and protocol will be provided to County for review and approval to ensure resource protection. Any other decontamination procedures deemed necessary in the future will follow this review and approval process between County and Operator.
- 6.17. **Expenses of Operator.** Operator will conduct all of its business at its own expense and without financial or in-kind contributions from County. Operator will not otherwise suggest, state, or imply that County will participate, guarantee, or assist in any financial or other obligation undertaken by Operator with respect to its operations at the Property.
- 6.18. **Cultural Resources and Heritage Preservation.** Operator acknowledges that the Property is listed in the National Register of Historic Places as the Colossal Cave **Colossal Cave Preservation Park Historic District (Historic District)**. Historic District; is a designated Priority Cultural Resource in County's Sonoran Desert Conservation Plan; and is subject to Board of Supervisors Policy C 3.17, Protection of Cultural Resources. Therefore, any alteration or improvement to any building, structure, or object of the Property, regardless of the nature of the alteration or improvement, and regardless of the function, age, or condition of the building, structure, or object, must be reviewed and

approved in writing by the Cultural Resource & Historic Preservation Office (CRHP) unit of CLR. CRHP shall respond in writing to any proposal by Operator within thirty days (except under extraordinary circumstances).

6.18.1. *Use and Maintenance of Historic Buildings and Structures.* Because historic buildings and structures tend to deteriorate quickly when they are unoccupied or unused, Operator shall prepare a five-year historic preservation plan and schedule detailing the use and maintenance of all buildings and structures of the Property within one year of executing this contract. Operator will consult with CRHP regarding the relative priorities for use and maintenance of buildings and structures that are currently unused.

6.18.2. *Inspections.* CRHP maintains the right to inspect the Property as needed, upon reasonable notice, to determine Operator's compliance with the cultural resource & heritage preservation stipulations of this agreement.

6.18.3. *Prohibited Activities, Activities Subject to Approval and Allowable Uses of the Property.* Without limiting the general restrictions and obligations set forth herein, Operator hereby agrees to the following:

A) No buildings, structures or objects shall be demolished, removed or razed except as provided in 6.21.

B) Operator shall not increase or decrease the height of, make additions to, change the exterior construction materials or colors of, or move, improve, alter, reconstruct, or change the facades and roofs of the buildings without prior written approval from CRHP.

C) Operator shall not remove, demolish, or alter the interior features of the buildings or structures without prior written approval from CRHP.

D) Operator shall not change the floor plan of the buildings without prior approval from CRHP.

6.18.4. *Archaeology and Ground-Disturbing Work.* Operator shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, paleontological, archeological, architectural, or other cultural artifacts, relics, human remains, or objects of antiquity. In the event such items are discovered on the Property, Operator shall immediately notify County and protect the site and the material from further disturbance until County gives clearance to proceed.

6.18.5. *Proposed Ground Disturbance.* To protect the known and unknown archaeological or paleontological resources of the Property, Operator shall submit to CRHP detailed plans for any proposed disturbance of the ground surface of any part of the Property. CRHP shall respond in writing to any proposal by Operator within thirty (30) days (except under extraordinary circumstances) or such approval shall be deemed to have been given.

6.18.6. *Minimization of Adverse Effects.* If an archaeological or paleontological resource is discovered inadvertently during ground disturbance, Operator shall cease all work in the vicinity of the discovery and notify CRHP immediately of such discovery. Operator shall consult with CRHP with the goal of avoiding or minimizing adverse effects on such resources. If an inadvertent discovery includes an archaeological resource potentially eligible for listing in the National Register of Historic Places, or a resource of religious or cultural significance to a federally recognized Tribe, CRHP shall consult with the relevant agencies and Tribes in accordance with 36 CFR § 800.13, and applicable federal and state laws and regulations.

6.19. **Maintenance.** Operator shall take commercially reasonable actions to secure the Property

from the elements, vandalism and arson; undertake any stabilization that is necessary to prevent deterioration; undertake all normal maintenance and repairs; and maintain the Property in a good and sound state of repair and structural integrity.

- 6.20. **Casualty Damage.** If the Property is damaged due to a sudden, unexpected, or unusual event, Operator shall promptly take all steps necessary to render any undamaged portions of the Property in a reasonably safe condition and promptly take all commercially reasonable efforts to render same in a secure and watertight condition and to minimize additional damage to the Property.
- 6.21. **Extinguishment.** The parties herein agree that if the property suffers substantial harm, through no fault of Operator (such as a natural disaster, a fire, or other casualty loss), this Covenant may be extinguished by written agreement of the parties.

7. Property Improvements

- 7.1. **Capital Improvement Program.** Above and beyond general maintenance and operating expenses or repairs set forth in Section 6.13, Operator shall conduct a Capital Improvement Program to fund upgrades, refurbishment, or redevelopment of roads, buildings, picnic areas, and campgrounds located on the Property. To that end, Operator shall set aside three percent of the gross operating revenues arising from the Property for each year into a restricted fund for use for capital improvement projects in accordance with **Exhibit C**.
- 7.1.1. For purposes of this Section, "gross operating revenues" means all revenues from any sources from the operation of Operator's activities on the Property, excluding grant funds, gifts, and donations.
- 7.1.2. On or before January 31 of each year, Operator shall provide County with a report and accounting covering the period ending December 31 of that previous fiscal year, demonstrating that such funds have been set aside or encumbered and are being used for the planning, design, and construction of capital improvements to the Property, identifying such improvements, the date of completion or projected completion, and the cost or projected cost.
- 7.2. **Alterations and Improvements to Property.** Any work to the Property which would affect the appearance, structural integrity, or impact the Character-Defining Features of the Property shall be reviewed and approved by County's Director of Attractions & Tourism in consultation with the CLR Department. Additionally, County Administration approval will be required if the Alterations estimated cost exceeds \$100,000, and the consent of the Board of Supervisors for Alterations estimated cost exceeding \$200,000.
- 7.3. **Reasons for Disapproval.** County shall not unreasonably withhold consent; provided, however, it shall be reasonable for County to withhold consent if the Alterations:
- 7.3.1. adversely affect the integrity of any structural, mechanical, or electrical system within any portion of the Property;
- 7.3.2. result in the Reviewing Party being required to perform any work that could otherwise be avoided or deferred;
- 7.3.3. result in an increase in the premiums for any hazard or liability insurance carried by the Reviewing Party, result in an increased risk of liability, or pose a safety hazard;
- 7.3.4. result in an increase in the demand for water, utilities or services (including wastewater treatment) that are provided by the Reviewing Party to the Property;
- 7.3.5. adversely impact the listing of the Property or deviate from the standards required to maintain the listing of the Property on the National Register of Historic Places.

7.3.6. adversely impact integrity of show cave or other cave and karst resources on or off the Property within CCMP.

7.4. **No Liability for Approval of Alterations.** Review and approval of the Alteration Plans will be solely for County's purposes and will not imply that County has reviewed the Alteration Plans for quality, design integrity, legal compliance, or other substantive matters. Operator will be responsible for any omissions or errors in the Alteration Plans. The Reviewing Party's review will be solely to determine that the proposed Alterations are consistent with the public purposes of this Agreement.

7.5. **Funding of Alterations.** Contracting Party will solely fund their respective Alterations or other improvements authorized under this Agreement, except that County and Operator may agree to share in cost of any Alterations, or County may choose to fund Alterations and adjust the rent accordingly with the agreement of Operator. Operator shall not use County property as collateral to finance Alterations. Operator is solely responsible for repayment of any debt associated with Operator's financing of any Alterations. Upon termination of Agreement, Operator is responsible for any outstanding debt related to Operator's financing of Alterations.

7.6. **Liens.** Operator must timely pay all Operator's contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Property and will indemnify and defend County against all legal costs and charges resulting from any liens filed against the Property by any person or entity providing materials or services to the Property.

7.7. **Property of County.** Once installed, Alterations are part of the Property, owned by County and maintained and repaired by Operator as provided in this Operating Agreement.

8. **Environmental.**

8.1. **Hazardous Material.** For the purposes of this section, "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Arizona, or the United States Government and includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 *et seq.*, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) 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), (vi) 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 (vii) 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.*

8.2. **Hazardous Materials Prohibited; Clean Air Act.** Operator may not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Property by Operator or Operator's agents, employees, contractors, or invitees without the prior written consent of County, other than such Hazardous Materials that are necessary or useful to Operator's business and will be used, kept, and stored in a manner that complies with all laws regulating those Hazardous Materials. Operator will comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and Arizona Revised Statutes, Title 49, Chapter 3.

8.3. **Environmental Act.** For purposes of this Section, "Environmental Act" means an occasion in which:

8.3.1. Operator breaches the obligations stated in this section;

- 8.3.2. the presence (whether consented to by County or otherwise) of Hazardous Material which results in contamination of the Property or such soil or groundwater, whether on the Property, or on or in the soil or groundwater under or adjacent to the Property, caused or permitted by Operator or Operator's agents, employees, contractors, or invitees;
 - 8.3.3. contamination of the Property or such soil or groundwater by Hazardous Material otherwise occurs for which Operator is legally liable to County for damage resulting therefrom; or
 - 8.3.4. if contamination occurs elsewhere in connection with the transportation by Operator of Hazardous Material to or from the Property.
- 8.4. **Environmental Indemnity.** In the event an Environmental Act occurs, Operator 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) that arose or arises during or after the term of this Lease as a result of such contamination. This obligation of Operator 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 presence, as a result of any action or inaction on the part of Operator or Operator's agents, employees, contractors, or invitees, on the Property or the soil or groundwater on, under or adjacent to the Property, or elsewhere in connection with the transportation by Operator of Hazardous Material to or from the Property.
- 8.5. **Clean-Up.** County is concerned about the presence of any Hazardous Material, caused or permitted by Operator or Operator's agents, employees, contractors, or invitees, which results in any suspected contamination of the Property, or the soil or groundwater under or adjacent to the Property. When there is such a presence of Hazardous Material, Operator will promptly notify County in writing and take all actions, at Operator's expense, as are necessary to return the Property or such soil or groundwater to the existing condition prior to the introduction of any such Hazardous Material to the Property, or to such soil or groundwater. Before taking such remedial actions, Operator will first obtain County's approval of such actions, and County will not unreasonably withhold approval so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property. This Section 8.5 does not limit the foregoing sections in this Agreement.
- 8.6. **Pre-existing Contamination.** Any Hazardous Materials contaminating the Property prior to Operator's possession of the Property in 2015 will not result in liability for Operator under this Section except to the extent such contamination is aggravated by the action or inaction of Operator.
- 8.7. **Notices Regarding Environmental Conditions.** Operator will, within ten business days following receipt, provide County with a copy of (i) 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 Operator or the Property alleging any violation of any local, state, or federal environmental law or regulation or requiring Operator to take any action with respect to any release on or in the Property or the soil or groundwater under or adjacent to the Property of Hazardous Material, or (ii) any notices from a federal, state, or local governmental agency or private party alleging that Operator might 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.

8.8. **Survival.** Operator's and County's obligations under this Section will survive the expiration or earlier termination of this Agreement and vacation of the Property.

9. **Entry by County.** County may enter the Property at reasonable times to inspect the Property and Operator's operations on the Property.

10. **Insurance Requirements.** Operator will procure and maintain, throughout the term of this Agreement, insurance against claims for injury to persons or damage to property that may arise from or in connection with the actions of Operator, its agents, representatives, employees, volunteers or subcontractors, as provided below. Operator will require any subcontractors to also obtain and maintain, during the term of their operations at the Property, insurance that complies with the below requirements.

10.1. **Minimum Scope and Limits of Insurance.** Operator must provide coverage with limits of liability not less than those stated below.

10.1.1. *Commercial General Liability (CGL).* Policy shall be an occurrence form basis to include insurance coverage for bodily injury, property damage, personal injury, broad form contractual liability, products/completed operations and personal/advertising injury. Policy limits shall be \$2,000,000 Each Occurrence and \$4,000,000 general aggregate.

10.1.2. *Liquor Liability Insurance.* Coverage is required whenever alcohol is being sold. The Liability Policy may be under the vendor's CGL Policy or a specialized policy with policy limits of at least \$2 million per occurrence and \$4 million general aggregate. The policy shall be endorsed to include Pima County and Operator as additional insureds.

10.1.3. *Business Automobile Liability.* Operator must provide Auto Liability coverage for Bodily Injury and Property Damage in the amount of \$1 million combined single limit for vehicles used in the performance of services under this Agreement and any renewals thereof.

10.1.4. *Workers' Compensation (WC) and Employers' Liability* - Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers Liability coverage - \$1,000,000 each accident and each person.

10.1.5. *Builders Risk.* Operator must obtain builder's risk insurance for any alteration projects it carries out on the Property in an amount equal to the contract amount including all subsequent change orders. Pima County shall be included as a named insured to the policy. Coverage shall be written on an all-risk replacement cost basis and shall include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing. Policy shall contain a waiver of subrogation endorsement in favor of Pima County and its districts and shall be maintained until the final payment is made and the project is fully released to Operator. The Finance Director (as defined below) will determine the amount of insurance required.

10.2. **Additional Insurance Requirements.** The policies must include, or be endorsed to include the following provisions:

10.2.1. *Claims Made Coverage.* If any part of the Required Insurance is written on a claims-

made basis, any policy retroactive date must precede the effective date of this Contract, and Operator must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

10.2.2. *Additional Insured.* The General Liability and Business Automobile Liability Policies must each be endorsed to include Pima County and its districts as an additional insured. The liability policies must also name County's officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Operator.

10.2.3. *Subrogation.* The General Liability, Business Automobile Liability and Workers' Compensation Policies must each be endorsed to contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Operator.

10.2.4. *Primary Insurance.* Operator's policies must stipulate that they are primary and that any insurance carried by Pima County, its district, its agents, officials, or employees is excess and not contributory insurance. All insurance deductibles and retentions are the responsibility of Operator and not Pima County. Coverage provided by Operator may not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.3. **No Limitation on Indemnity.** These insurance requirements are minimum requirements and in no way limit the indemnity covenants contained in this Agreement. County in no way warrants that the minimum required limits are sufficient to protect Operator from liabilities that might arise out of activities at the Property by Operator, its agents, representatives, employees or subcontractors, and Operator is free to purchase additional insurance.

10.4. **Notice of Cancellation.** Each required insurance policy must provide that it may not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days prior written notice to Pima County.

10.5. **Acceptability of Insurers.** Insurance must be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. County in no way warrants that the above-required minimum insurer rating is sufficient to protect Operator from potential insurer insolvency.

10.6. **Verification of Coverage.** Operator will furnish County with certificates of insurance (ACORD form or equivalent approved by County) showing it has the required insurance policies. Each certificate must be signed by a person authorized by that insurer to bind coverage on its behalf. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of this Agreement. County reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

10.7. **Modification of Insurance Requirements.** If at any time, in the sole opinion of the Risk Manager, the above insurance requirements no longer provide sufficient protection for County, the Finance Director may modify the requirements, with at least 30 days prior notice to Operator.

10.8. **Sub-Contractors.** Operator must include all subcontractors as additional insureds under its policies or must require the subcontractors to carry insurance satisfying all the requirements of this Section 9, including the obligation to provide certificates and endorsements.

11. **Indemnification.** To the fullest extent permitted by law, Operator will defend, indemnify and hold

harmless County, its district, its officers, employees, and agents from and against all claims, liabilities, losses, damages, costs, and expenses, including but not limited to reasonable attorney's fees and litigation expenses arising out of or relating (directly or indirectly) to (i) events occurring on at the Property during the term or any condition created in or about the Property during the Term; (ii) any breach of any provision of this Agreement by Operator or any of Operator's subcontractors, employees, agents, or licensees. Operator is not obligated to indemnify County for the consequences of any negligent or intentionally wrongful act or omission of County, its agents, employees, or contractors.

12. **Operator not Agent of County.** Operator will exercise day-to-day control of activities on the Property, and County will not control those activities. Operator's officers, employees, and agents are not employees of or otherwise under the control of County, nor are they entitled to receive any employment related compensation or fringe benefits under the Pima County Merit System.
13. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and must be mailed by first class, registered, certified or overnight mail, return receipt requested, postage prepaid, or transmitted by electronic mail, or hand delivered, to the parties at the addresses set forth below, or to such other address as any Party from time to time designates by written notice to the other Party.

If to County:

Director, Pima County Department of Attractions & Tourism
115 N. Church Avenue, Suite 221
Tucson, AZ 85701

With a copy to:

Director, Pima County Conservation Lands & Resources
201 N. Stone Ave., 6th Floor
Tucson, AZ 85701

Director, Pima County Facilities Management
150 W. Congress, 3rd Floor
Tucson, AZ 85701

If to Operator:

ExplorUS, LLC
6720 W 121st St.
Overland Park, KS 66209

If mailed, all such notices, demands, requests, or other communications will be deemed received seventy-two hours after deposit in the U.S. mail. Notice served personally or by electronic mail or facsimile will be deemed received upon actual delivery. Notices will be deemed to be received even if the party rejects or refuses to accept the notice, or delivery fails because the party changed its address without appropriate notice to the other party.

14. **Conflict of Interest.** This Agreement is subject to cancellation under A.R.S. § 38-511 for conflicts of interest.
15. **Non-Discrimination.** During the performance of this Agreement, Operator will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, color, religion, sex, disability or national origin. Operator shall comply with the provisions of Arizona Executive Order 75-5, as amended by Executive Order 99-4 and 2009-09 issued by the

Governor of the State of Arizona.

16. **Choice of Law.** The laws of the State of Arizona govern this Agreement and will apply to any action relating to this Agreement. Any court action must be brought in a court in Pima County, Arizona.

17. **Default/Termination.**

17.1. **Termination; Cure.** If, in the sole judgment of County, Operator does not perform in accordance with any of the conditions of this agreement, or if Operator is in default of any provision of this Agreement, County will give Operator written notice specifying the nature of the default. County may terminate this Agreement if Operator fails to remedy the default within thirty calendar days of County's notice of default; provided, however, that if the nature of Operator's default is such that more than thirty calendar days are reasonably required for its cure, then Operator will not be in default if Operator commences such cure with said thirty calendar days and thereafter diligently prosecutes such cure to completion, provided such cure is completed within one hundred twenty calendar days of the notice by County. County may choose to terminate this Agreement at the time of the default for any of the following:

17.1.1. *Unlawful or Dangerous Activity.* Operator acts in violation of any law or any grossly negligent action by Operator that causes a threat to the health or safety of the general public, employees, or significant damage to the Property.

17.1.2. *Capital Improvements.* Failure of Operator to meet agreed upon capital improvement benchmarks as outlined in **Exhibit C**.

17.1.3. *Vacation or Abandonment.* The vacating or abandonment of the Property, or any portion thereof, by Operator, where such failure shall continue for a period of ten calendar days after notice of such default is sent by County to Operator.

17.1.4. *Financial.* The failure by Operator to account appropriately for revenues and expenditures, or any failure to use Capital Improvement Program funds as required by Section 7 above.

17.1.5. *Insurance.* The failure by Operator to maintain insurance policies as set forth above for any time; in which event Operator must immediately cease all operations at the Premises until such insurance is obtained.

17.1.6. *Non-payment of Rent.* The failure by Operator to timely pay the Monthly Rent or any other sum due from Operator to County under this Agreement.

17.1.7. *Other Covenants.* The failure by Operator to observe or conform to other historic preservation and natural resource management covenants assigned to the property to include the modified Cave Management Plan.

17.1.8. *Repeated Defaults.* More than three material Defaults by Operator, as set forth in this section in any calendar year, even if Operator cures the defaults within the applicable grace periods set forth above.

17.2. **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. No right or remedy conferred or reserved 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 conferred or reserved in this Agreement, including, without limitation, the right to damages arising out of the breach or default of this Agreement.

18. **Disposition of Personal Property.** Operator will maintain a current inventory of all items of personal property owned by Operator and placed or kept on the Property by Operator. Any items

of personal property left on the Property upon expiration or earlier termination of this Agreement, including all personal property, gift shop inventory and displays—except those there on loan—will become the property of County and will be surrendered to County free and clear of all liens and encumbrances of every kind, unless waived by County. County may sell or otherwise dispose of those items without liability to Operator.

19. **Non-Waiver.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed by the other party or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing to it at any time shall not be construed as an accord and satisfaction.
20. **Amendment.** The parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the parties.
21. **Americans With Disabilities Act.** Operator 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, in its operation of the Property.
22. **Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394, if Operator engages in for-profit activity and has 10 or more employees, Operator certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or Operator produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Operator becomes aware during the term of the Agreement that Operator is not in compliance with A.R.S. § 35-394, Operator must notify County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
23. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Operator engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000.00 or more, Operator certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
24. **Legal Arizona Worker's Act.** If Operator, under this agreement, furnishes labor, time or effort to County within the State of Arizona, the following applies: Operator warrants that it will at all times during the term of this agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. §§ 23-214 (A) and 41-4401 (together the "State and Federal Immigration Laws"). Operator will further ensure that each subcontractor who performs any work for Operator under this agreement likewise complies with the State and Federal Immigration Laws. A breach of this paragraph will be deemed a material breach of this agreement that subjects Operator to penalties up to and including termination of the agreement. County retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on a contract related to this Agreement to ensure that the Contractor or subcontractor is complying with this warranty.
25. **Heat Injury and Illness Prevention and Safety Plan.** Operator hereby warrants that if Operator's employees perform work in an outdoor environment under this Agreement, Operator will keep on file a written Heat Injury and Illness Prevention and Safety Plan. At County's request, Operator will provide a copy of this plan and documentation of heat safety and mitigation efforts

implemented by Operator to prevent heat-related illnesses and injuries in the workplace. Operator will post a copy of the Heat Injury and Illness Prevention and Safety Plan where it is accessible to employees. Operator will further ensure that each subcontractor who performs any work for Operator under this Agreement complies with this provision.

26. **Subcontractors.** Operator is 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 Operator is responsible for the acts and omissions of its own employees. Nothing in this Agreement creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
27. **Entire Agreement.** This Agreement constitutes the entire agreement between County and Operator with respect to the Property, and no modification of this Agreement is binding unless in writing and signed by both parties.
28. **Exhibits.** The following exhibits to this Agreement are fully incorporated herein as if set forth at length:

Exhibit A: Management Area of Responsibility & Legal Description

Exhibit B: Colossal Cave Mountain Park Boundaries

Exhibit C: Capital Projects and Improvement Benchmarks

Exhibit D: Colossal Cave "Show Cave" Tour Routes

Exhibit E: Cave Cleaning – Standard Operating Procedure

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.)

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day, month, and year written below.

COUNTY

Pima County, a political subdivision of the State of Arizona

Rex Scott
Chairman, Board of Supervisors

Date _____

OPERATOR:

Colossal Cave, LLC. An Arizona limited liability company

Printed Name and Title
Frank Pikes, CEO

Date 8/15/2025

ATTEST:

Melissa Manriquez, Clerk of the Board

Date _____

APPROVED AS TO FORM:

Bobby Yu
Bobby Yu, Deputy County Attorney

Date 7/7/2025

APPROVED AS TO CONTENT:

Diane Frisch
Diane Frisch
Director, Attractions and Tourism

Date 8/15/2025

Kristof Gade
Kris Gade
Director, Conservation Land & Resources

Date 8/4/2025

Exhibit A

Colossal Cave Designated Management Area of Responsibility



27 June 2024

EXHIBIT "A" LEGAL DESCRIPTION

All that portion of Sections 04, 05, 07 and 08, Township 16 South, Range 17 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows;

COMMENCING at Pima County Survey OPUS Control Point 16S17E_E06, a RB4 with tag "PCDOT GPS", west side of the Colossal Cave Park parking lot to which Pima County Survey OPUS Control Point 15S17E_Y02, a chiseled "x" in a 5'x5' concrete slab at the east corner of the intersection of Pistol Hill Road and Old Spanish Trail bears North 37°53'24" West, 6,923.62 feet,(Basis of Bearing);

THENCE South 59°41'02" West a distance of 157.58 feet to the **POINT OF BEGINNING**;

THENCE North 02°26'20" West, 156.04 feet to the beginning of a tangent curve concave to the south having a radius of 300.00 feet and a central angle of 176°13'43";

THENCE along the arc of said curve to the left, 922.73 feet to a point of tangency;

THENCE South 01°19'57" West, 140.02 feet;

THENCE South 26°00'59" East, 373.96 feet;

THENCE South 06°01'54" West, 248.03 feet;

THENCE South 35°24'32" East, 125.41 feet;

THENCE South 01°36'50" East, 143.80 feet;

THENCE South 65°11'55" East, 501.93 feet;

THENCE South 49°32'44" East, 271.45 feet;

THENCE North 81°06'03" East, 170.13 feet;

THENCE South 54°54'42" East, 91.57 feet;

THENCE North 66°37'14" East, 244.89 feet;

THENCE North 73°39'22" East, 158.28 feet;

THENCE North 44°40'30" East, 492.52 feet;

THENCE South 64°53'29" West, 286.26 feet;

THENCE South 43°34'52" West, 402.44 feet;

THENCE South 42°26'39" West, 192.04 feet;

THENCE South 60°40'47" West, 206.71 feet;

THENCE South 73°07'04" West, 118.51 feet;

THENCE North 66°02'36" West, 76.00 feet to the beginning of a tangent curve, concave to the southeast, having a radius of 120.00 feet, and a central angle of 115°27'48";

THENCE along the arc of said curve to the left, 241.83 feet to a point of tangency;

THENCE South 01°30'24" East, 107.35 feet;

THENCE South 55°13'47" East, 145.86 feet to the beginning of a tangent curve, concave to the northwest, having a radius of 120.00 feet and a central angle of 210°24'51";

THENCE along the arc of said curve to the right, 440.69 feet to a point of tangency;

THENCE North 24°48'56" West, 162.05 feet;

THENCE North 08°12'17" East, 227.04 feet;

THENCE North 45°55'55" West, 177.56 feet;

THENCE North 73°06'38" West, 237.48 feet;

THENCE South 74°13'07" West, 498.74 feet;

THENCE South 61°23'47" West, 177.61 feet;

THENCE South 03°22'03" West, 103.43 feet;

THENCE South 00°09'53" East, 704.53 feet;

THENCE South 50°49'48" East, 174.74 feet;

THENCE South 54°28'12" East, 97.43 feet to the beginning of a tangent curve, concave to the west, having a radius of 200.00 feet and a central angle of 97°54'31";

THENCE along the arc of said curve to the right, 341.77 feet to a point of tangency;

THENCE South 43°26'19" West, 551.99 feet to the beginning of a tangent curve concave to the east, having a radius of 100.00 feet and a central angle of 123°03'17";

THENCE North 27°00'10" East, 94.08 feet;
THENCE North 14°02'24" East, 141.90 feet;
THENCE North 07°12'59" West, 161.21;
THENCE North 17°58'48" East, 478.90 feet;
THENCE North 08°07'56" East, 114.52 feet;
THENCE North 18°34'26" West, 273.37 feet;
THENCE North 01°39'08" East, 488.83 feet;
THENCE North 74°34'55" East, 60.00 feet;
THENCE North 03°26'36" East, 120.50 feet;
THENCE North 71°34'37" West, 75.00 feet;
THENCE North 02°28'25" East, 924.57 feet to the beginning of a tangent curve, concave to the west, having a radius of 2,000.00 feet and a central angle of 20°59'07";
THENCE along the arc of said curve to the left, 732.52 feet to a point of tangency;
THENCE North 18°30'42" West, 166.51 feet to the beginning of a tangent curve, concave to the east, having a radius of 300.00 feet and a central angle of 84°31'33";
THENCE along the arc of said curve to the right, 442.58 feet to a point of tangency;
THENCE North 66°00'51" East, 152.92 feet to the beginning of a tangent curve, concave to the southwest, having a radius of 300.00 feet and a central angle of 109°26'30";
THENCE along the arc of said curve to the right, 573.04 feet to a point of tangency;
THENCE South 04°32'38" East, 1,376.16 feet;
THENCE South 26°14'55" East, 434.26 feet;
THENCE South 78°37'34" East, 338.76 feet;
THENCE North 87°38'50" East, 147.95 feet;
THENCE South 04°39'45" East, 212.55 feet;
THENCE South 69°06'27" East, 130.07 feet to the beginning of a tangent curve, concave to the west, having a radius of 175.00 feet and a central angle of 171°13'23";

THENCE along the arc of said curve to the right, 522.97 feet to a point of tangency;

THENCE North 77°53'04" West, 605.99 feet to the **POINT OF BEGINNING**;

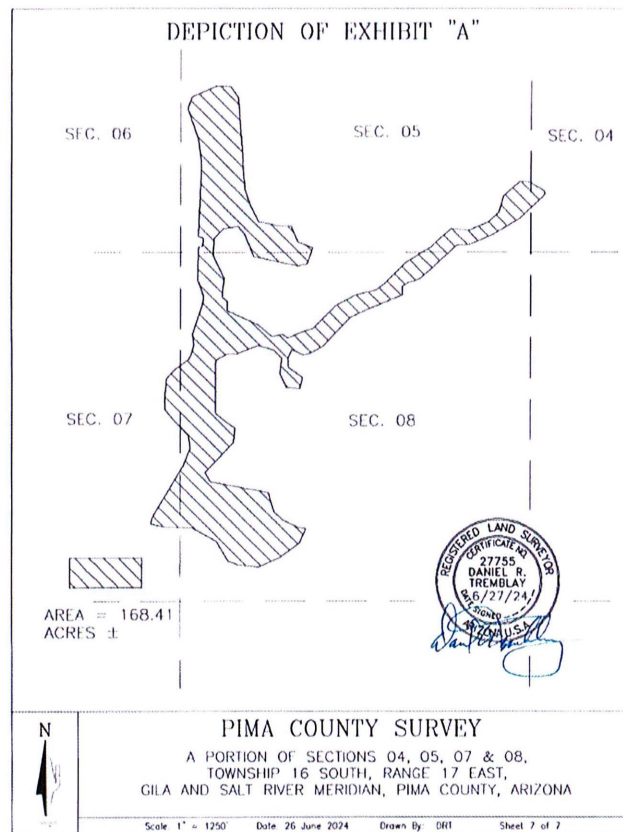
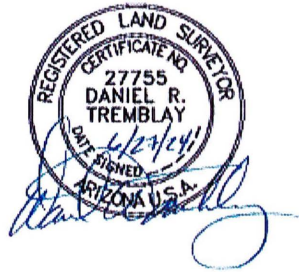


Exhibit B

Colossal Cave Mountain Park Boundaries

COLOSSAL CAVE MOUNTAIN PARK

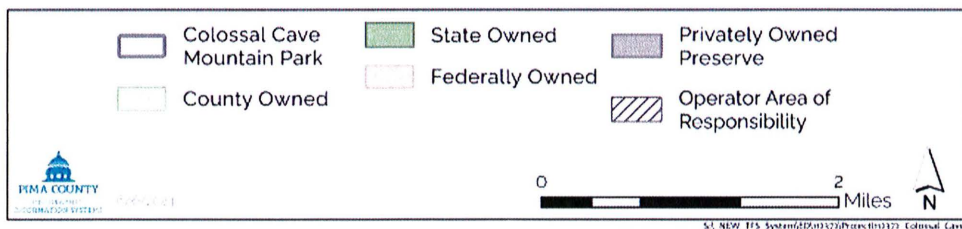
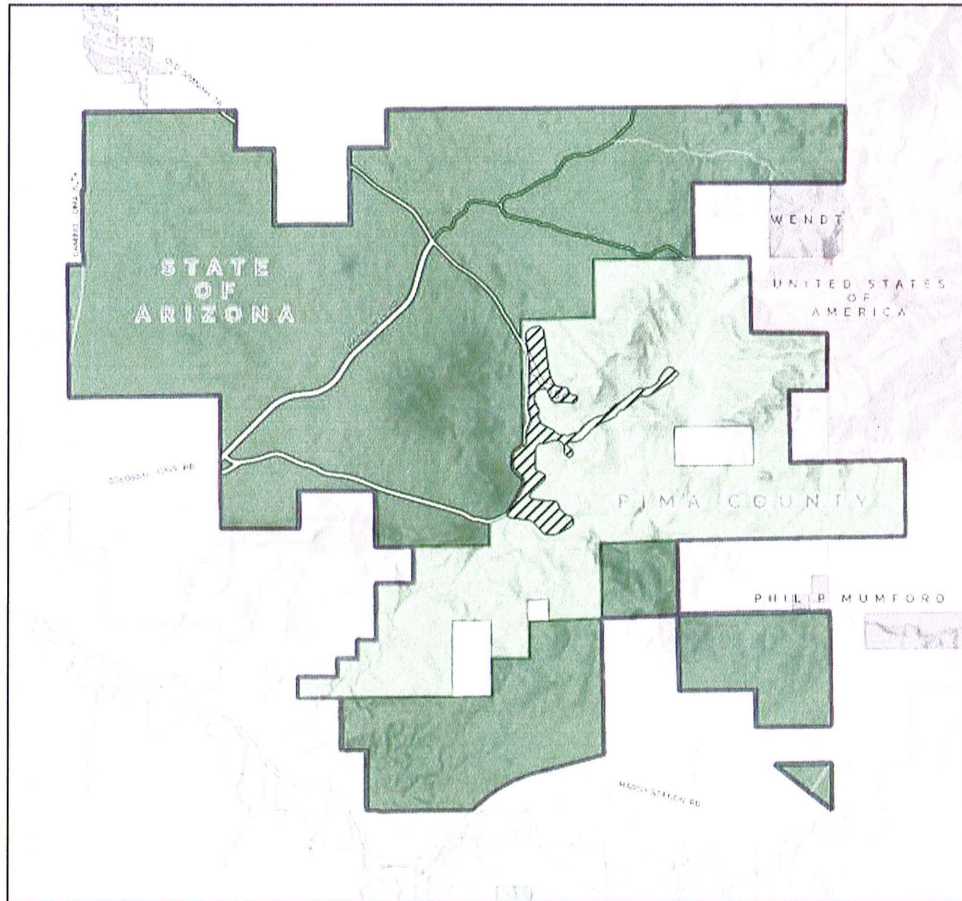


Exhibit C

Capital Projects, Improvements, & Operational Documents

Operator is responsible for developing and completing mutually acceptable improvement projects to rehabilitate and improve park assets within the first five years of the Agreement. All projects must be approved by County before proceeding. Capital Projects will be reviewed annually and may be added or subtracted from this list with both parties' consent.

La Posta Quemada Ranch House	
<i>Continuation of rehabilitation and improvements projects to create multi-functional venue space for event rental, meeting space, and historical library.</i>	
Project	Benchmark
Open for tours/events/meetings at least 2-3 days per week	1st year
Feasibility evaluation for renovation of interior restroom(s)	1st year
Use on-loan historical items from County to furnish library area	1st year
Feasibility evaluation for renovation or rebuild of septic system	1st 2 years
Provide furnishings for interior courtyard and outdoor patio areas	1st 2 years
Construction of adjacent exterior restroom facility	1st 3 years
Renovation of kitchen area for catering operations	1st 3 years
Upgrade parking areas	1st 3 years
La Posta Quemada- CCC Museum/Butterfly Garden	
<i>Continued improvements to historic CCC Museum and upgrades to Butterfly Garden to create outdoor event venue space.</i>	
Project	Benchmark
Update/replace furnishings in CCC Museum	1st 6 months
Open museum for tours at least 2- 3 days per week	1st 6 months
Use of on-loan historical items from County to furnish CCC Museum	1st year
Update & upgrade general landscaping of Butterfly Garden & sluice	1st 2 years
Construction of gazebo for event functions along with seating space in Butterfly Garden	1st 5 years
Update & upgrade general landscaping of Butterfly Garden	1st 5 years
Day Duplex & Cowboy Picnic Area	
<i>Repairs and stabilization of Day Duplex along with development strategy and implementation of improvements to duplex, Cowboy Picnic Area and adjacent picnic areas and campsites.</i>	
Project	Benchmark
Stabilization Plan for Day Duplex	1st 6 months
Day Duplex roof & stucco repairs.	1st 6 months
Development plan for Day Duplex renovations for use as guest rental space	1st 3 years
Implementation of first phase of Day Duplex Development plan	1st 5 years
Plan for renovation of Cowboy Picnic Area Ramada & grounds	1st 5 years
Plan Water/Electrical/Sewer upgrades for campsites and picnic areas	1st 5 years
Development of Operational Documents	
<i>Development of Operational Documents for the Show Cave to include cave cleaning, WNS protocol, and rescue protocol. Operational Documents for CCMP to include Heat injury and illness prevention plan and safety plan. Preparation of 5-year historic preservation plan and schedule.</i>	
Project	Benchmark
Written Safety Plan for CCMP	1st 6 months
Written Cave Decontamination Procedures and Protocol for CCMP	1st 6 months
Written Show cave rescue protocol	1st 6 months
Heat Injury and Illness Prevention and Safety Plan	1st year
Preparation of five-year historic preservation plan and schedule detailing the use and maintenance of all buildings and structures of the Property	1st year
Campgrounds, Horse Stables area, Access Roads	
<i>Repair and stabilization of structures and infrastructure associated with the campgrounds and horse stables areas. Provide outdoor restroom for visitors in horse stables area.</i>	
Project	Benchmark
Evaluate historic barn for stabilization and repair needs as part of five-year historic preservation plan.	1st year
Evaluate La Sevilla and El Bosquico campgrounds and picnic areas infrastructure for repairs, maintenance and/or replacement needs.	1st year
Develop inspection and maintenance schedule for unpaved visitor access roads	1st year
Develop pavement preservation schedule for paved access roads and parking area within CCMP Operating area.	1st 2 years
Provide restroom facility for use of visitors to stable area.	1st 3 years

Exhibit D

Colossal Cave "Show Cave" Tour Routes

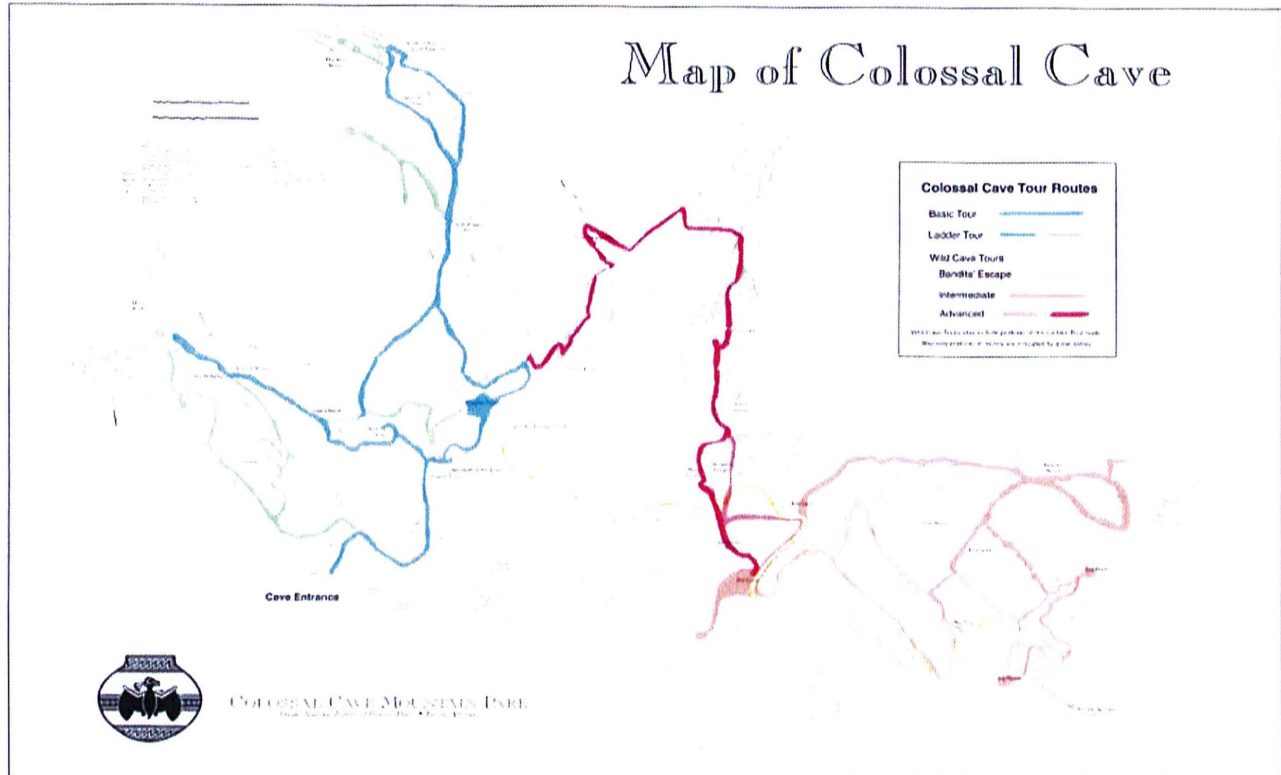


Exhibit E

Cave Cleaning – Standard Operating Procedure

Standard Operating Procedure (SOP) for Cleaning Colossal Cave

Purpose:

To establish a standardized cleaning protocol for maintaining hygiene and safety within the cave while minimizing environmental impact.

Scope:

This procedure applies to all designated pathways, handrails, and accessible areas within the cave that require routine maintenance and sanitation.

Responsibilities:

- All staff members are responsible for adhering to this SOP.
- The designated cleaning personnel will conduct routine and periodic cleaning as outlined.

Cleaning Procedures:

1. Handrails:

- Handrails are sanitized daily using a hydrogen peroxide solution to ensure guest safety and hygiene. Hydrogen peroxide has been the only cleaning agent to be shown to have minimal impact on cave life.
- Cleaning personnel must wear appropriate gloves and use lint-free cloths or disposable wipes to apply the sanitizer.

2. Pathways:

- Staff should avoid dusting or sweeping pathways due to mobilizing dust and debris from visitor shoes that could then settle on formations.
- Vacuuming with a shop vac or battery-powered vacuum would be more ecologically friendly. Damp cloths may also work but would take more time.
- Biospills (vomit, urine, feces, spit, blood) should be isolated immediately and tours should be prevented from moving through a biospill area until it is cleaned up.
- Cache kits should contain sufficient materials to protect staff as well as contain the spill.
- If a fluid control solidifier is used, care should be taken to keep any chemicals from leaving the trail.

3. Off-Path Areas:

- Areas adjacent to the main pathways may require cleaning when debris, guest items, or trash are identified.
- Staff will conduct a detailed inspection and remove foreign objects approximately twice per month or as necessary.
- Biospills off the main trail should follow guidance in the Cave Conservation and Restoration book (Werker and Werker 2006).

4. Non-Contact Areas:

- Sections of the cave with minimal or no human contact do not require regular cleaning.
- These areas should be visually inspected periodically to ensure no accumulation of debris or hazards.

Environmental Considerations:

- Only approved, non-corrosive, and environmentally safe cleaning agents should be used. Hydrogen peroxide is the most cave-friendly of the cleaning agents.
- Do not wash the trails in such a way that water runs off into the cave. Damp cloths should be used to prevent potential damage to the cave environment.
- Any observed cave formations or surfaces showing signs of degradation should be reported to the appropriate personnel.

Documentation and Compliance:

- A cleaning log should be maintained to track daily sanitation of handrails and periodic cleaning of pathways and off-path areas.
- Any incidents or required maintenance should be reported and recorded.

Review and Updates:

- This SOP will be reviewed annually and updated as necessary to maintain compliance with best practices and environmental guidelines.

By following this SOP, we ensure a clean, safe, and environmentally responsible approach to maintaining the Colossal Cave for both staff and visitors.