

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: Colossal Cave Mountain Park Boundaries
- Exhibit B: Property Boundaries
- Exhibit C: Property Location, Purpose and Scope of Activities
- Exhibit D: Maintenance Plan (Projects)
- Exhibit E: New Renovation Projects and Capital Improvements
- Exhibit F: Colossal Cave Preservation Park Historic District Boundary
National Register of Historic Places
- Exhibit G: Map of Colossal Cave

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

PIMA COUNTY, a political subdivision of the State of Arizona

Sharon Bronson, Chair, Board of Supervisors

Date

PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT:

Sharon Bronson, Chair, Board of Directors

Date

COLOSSAL CAVE, LLC.



Armand P. Ortega, Manager

8-6-2015

Date

ATTEST:

Robin Brigode, Clerk of the Board

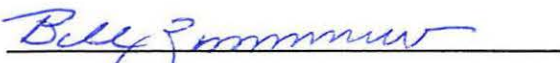
Date

REVIEWED AND APPROVED:



Tom Moulton, Director
Economic Development & Tourism

APPROVED AS TO CONTENT:



Suzanne Shields, Director,
Regional Flood Control District

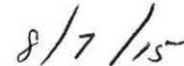
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Date

APPROVED AS TO CONTENT:

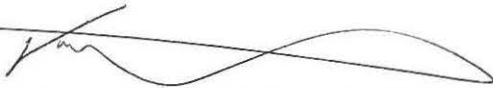


Chris Cawein, Director,
Natural Resources Parks and Recreation

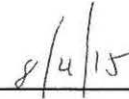


Date

APPROVED AS TO FORM:

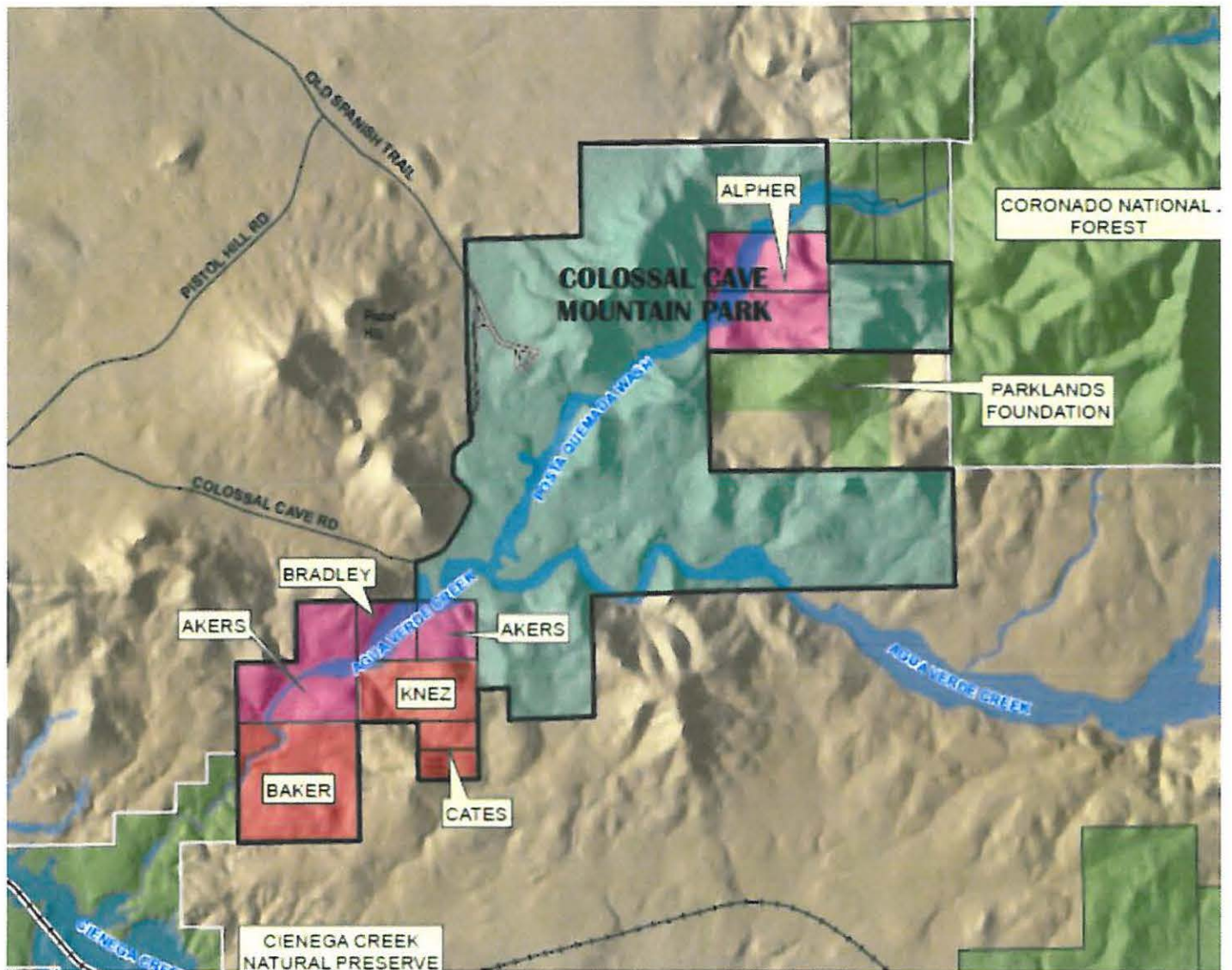


Tobin Rosen, Deputy
Pima County Attorney, Civil Division



Date

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

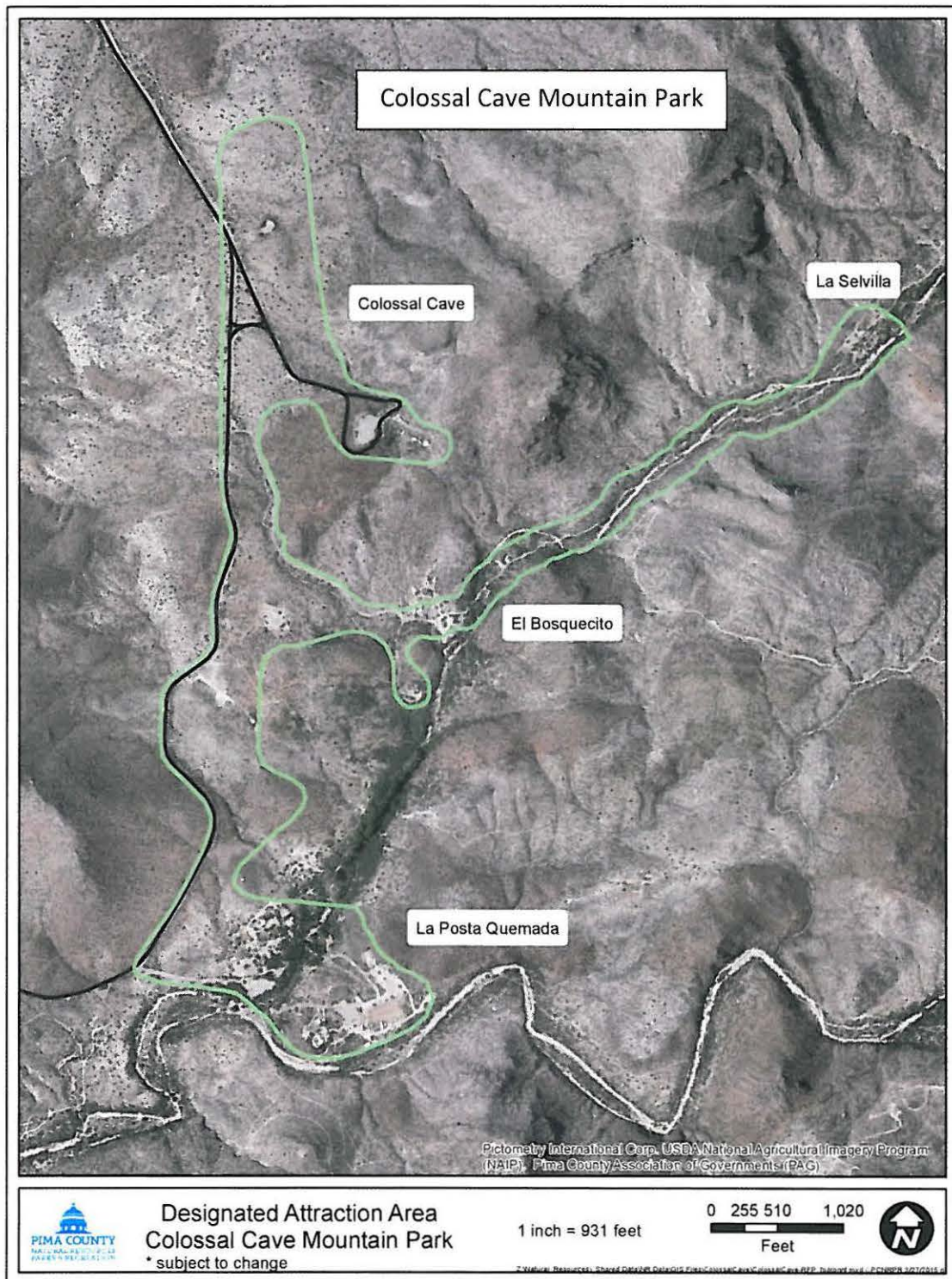


Exhibit C

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. Therefore; 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

Exhibit D

MAINTENANCE PLAN (PROJECTS)

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 State Historical Preservation Office (SHPO) for appropriate guidance for all work that involves significant historic features and material.
5. Within ninety (90) days of execution of contract, Managers' corporate Chief of Maintenance will tour the facility with Managers' architects, Pima County representatives 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 Managers' CMMS, by asset, and the CMMS will generate reminders and appropriate work orders for staff. Managers' 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 (2) 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 cave and facility wiring 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, clearing 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 (IPMS) 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 IPMS program for all insects and noxious weeds.
18. Evaluate the condition of all roofs within sixty (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 non-abrasive, 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 replace as appropriate.
30. Implement daily cleaning and inspections of all public areas.
31. Establish thirty (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 training sessions to review the manual and update as needed.
33. In each of the first three (3) years of the contract, require and pay for Managers' maintenance manager to attend at least one (1) maintenance-related or certified Archeological Institute of America 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 Managers' 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 State Historical Preservation Office before proceeding. Projects may be added to or subtracted from this list with both parties consent.

Project Name	Description
Upgrade retail at cave area	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.
Introduce limited food service at cave area	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.
Create food preparation area	<p>To support our proposed grab and go and hot food menus, we will need to install a small (110 square foot) food preparation area for the assembly of food. Candidate places to build this small preparation area include:</p> <ul style="list-style-type: none"> • The two-story CCC building in the cave area, • The small building between the retail building and the two-story CCC building in the cave area, • The basement of the retail building in the cave area, or • The ranch house. <p>The exact location of the food preparation area will be determined in conjunction with Pima County and the County Health Inspector.</p>
Upgrade patio at cave area	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.

Implement photo opportunity at the cave area	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, www.SmileLoungePhotoBoothNY.com (or equivalent) and/or develop a process to take photographs in the cave.
Adventure Activities	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.
Campsite improvements	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
Overnight lodging improvements	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.
Improve and Development of trails	County will take the lead on the development of any new trails in collaboration with Manager.
Preservation and maintenance plan	Implement a multi-year "Preservation and Maintenance Plan"

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

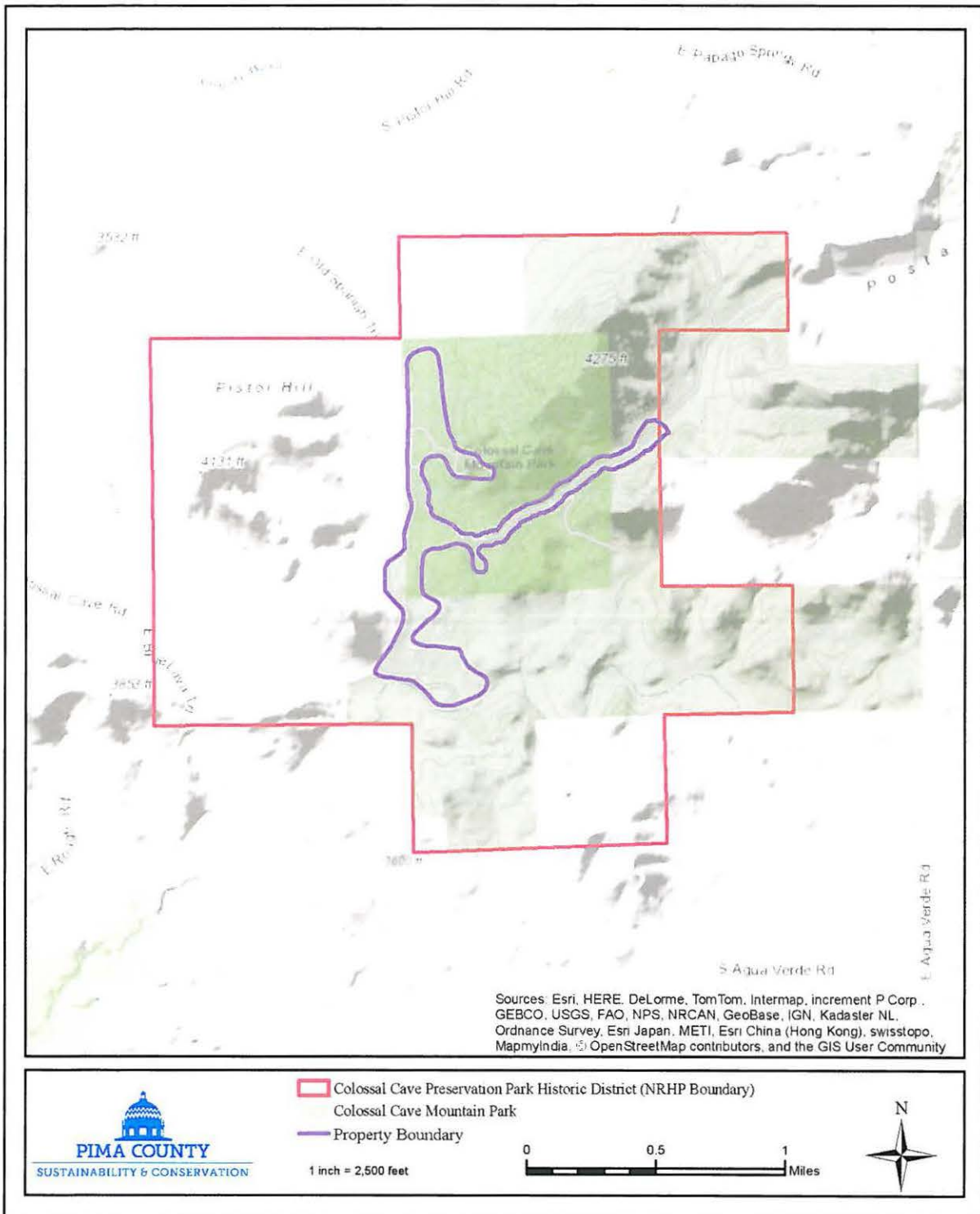


Exhibit G

Map of Colossal Cave

