



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: February 15, 2024

AGENDA TITLE

Consideration of a motion to approve a memorandum of understanding between federally recognized American Indian Tribal Nations and the City of Boulder and to authorize the city manager to execute the memorandum of understanding

PRESENTER(S)

Nuria Rivera-Vandermyde, City Manager
Pam Davis, Assistant City Manager
Dan Burke, Director of Open Space and Mountain Parks
Aimee Kane, Equity Officer
Teresa Taylor Tate, City Attorney
Janet Michels, Senior Counsel
Phillip Yates, Senior Communications Program Manager
Christian Driver, Senior Cultural Stewardship Program Manager

EXECUTIVE SUMMARY

The purpose of this agenda item is for City Council to consider approval of a Memorandum of Understanding (MOU) between federally recognized American Indian Tribal Nations and the city related to ongoing work across these governments. This work is the culmination of [government-to-government consultations](#) since 2019 and honors Tribal Nations' connections to Boulder since time immemorial. In the March [2023 consultation](#), Tribal Representatives and city staff reached consensus on the proposed MOU.

The proposed MOU seeks to consolidate past City-Tribal Nation Memorandums of Understanding developed in 1998, 2002 and 2004 that focus on city open space lands and incorporate additional provisions discussed in multiple government-to-government consultations since 2019. Broadly, the MOU seeks to:

- Set a foundation for sustaining future collaboration, engagement, and consultation;
- Support Tribal Nation input into Open Space and Mountain Parks (OSMP) decision-making on topics important to Tribal Nations;
- Develop a way to identify areas on open space of special concern to Tribal Nations to help guide future cultural resource consultations;
- Outline a process for ceremonial access and explore a permanent ceremonial location;
- Develop a process for limited harvesting of plants and other materials important to the tribes and;
- Continue ongoing cultural resource protection, consultations and notifications.

To date, three Tribal Governments have signed the MOU including the Comanche Nation, Oglala Sioux Tribe, and Pawnee Nation. We anticipate additional signatures from Tribal leaders throughout 2024 and are bringing this document before council now to honor commitments to our first three signatories and to demonstrate to our other Tribal partners that we are formally committed to the terms resulting from multiple years of government-to-government consultation.

The City of Boulder [acknowledges the city](#) is on the ancestral homelands and unceded territory of Indigenous Peoples who have traversed, lived in and stewarded lands in the Boulder Valley since time immemorial. Those Indigenous Nations include the: Di De'I (Apache), Hinono'eiteen (Arapaho), Tsétséhéstáhese (Cheyenne), Námúnúu (Comanche), Caiugu (Kiowa), Čariks i Čariks (Pawnee), Sosonih (Shoshone), Oc'eti S'akowin (Sioux) and Núuchiu (Ute).

The city recognizes that Indigenous knowledge, oral histories, and languages – handed down through generations over thousands of years – have shaped profound cultural and spiritual connections with Boulder-area lands and ecosystems and that those connections are sustained and celebrated to this day.

We extend our gratitude to our Tribal Nation partners for the continuing opportunity to listen and learn from them and appreciate the opportunity to work beyond our land acknowledgement as part of several ongoing projects with their Nations. Staff want to share that our land acknowledgment may change over the years as city staff and the Boulder community continue to learn about and address the intergenerational trauma caused by the violent colonization of Indigenous land.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to approve a memorandum of understanding between federally recognized American Indian Tribal Nations and the City of Boulder and to authorize the city manager to execute the memorandum of understanding

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** – No immediate direct impact, however enhancements to the city’s OSMP system resulting from MOU implementation may generate future increases in visitation.
- **Environmental** – Ongoing collaboration with Tribal representatives may include their guidance on land stewardship.
- **Social** – Engagement with Tribal representatives will continue to provide significant guidance on cultural resource preservation, Indigenous ceremonial needs, and Indigenous education and interpretation on city-managed land to support inclusivity and educational opportunities in Boulder.

OTHER IMPACTS

- **Fiscal** – There is no immediate need for additional funding to execute the MOU.
- **Staff time** – Executing the MOU can proceed using existing staff resources.

BACKGROUND

Tribal Engagement and Consultation History

While the city held regular consultations in the late 1990s and early 2000s, consultations between the city and Tribal Nations paused in the mid-2000s. The city’s adoption of the Indigenous Peoples Day Resolution in 2016, which directed the city to receive input from Tribal Nations to rename Settler’s Park, and staff’s desire to re-establish relationships with Tribal Nations led the city to host a consultation with American Indian Tribal Nations in Boulder in March 2019.

Below is an overview of past city consultations with Tribal Nations:

- **1998:** The City of Boulder began consultations with Tribal Nations as part of conversations regarding National Institute of Standards Technology. Those agreements resulted in:

- [Memorandum of Understanding A](#) in which the city and American Indian Tribal Nations agreed to create a spiritual, moral and policy partnership to protect the land south of Boulder.
- [Memorandum of Understanding B](#), in which the city agreed to provide reasonable fire protection services for permitted tribal cultural use of a protected area during fire bans.
- **2002:** Another City-Tribal Nation MOU outlines the need for annual consultations and outlines city agreements regarding Tribal Nation notification of finds of funerary objects and human remains on OSMP land and ceremonial access requiring temporary structures and/or fire. It also provides specific Tribal notifications for an open space property south of Boulder.
- **2004:** The city and Tribal Nations agreed to update the procedures related to ceremonies involving fire and temporary structures – such as tipis and sweat lodges – on Valmont Butte east of Boulder. Read the [MOU amendment](#).
- **2016:** Boulder City Council adopted the Indigenous Peoples Day Resolution. It plays a crucial role in helping the city to rebuild relationship with Tribal Nations by directing us to receive their guidance to rename Settler's Park in west Boulder.
- **March 2019:** City hosts first tribal consultation in 14 years. A name for Settler's Park was discussed, along with a celebration for a potential renaming. City staff and Tribal Representatives also determined that MOUs need to be updated.
- **May to August 2019:** City staff invites Tribal Representatives to participate in a working group to discuss and suggest changes to the four agreements the city shares with American Indian Tribal Nations. Discussions during those working meetings helped shape the proposed, updated MOU.
- **Spring 2020:** Plans for a tribal consultation are paused due to the impacts of the COVID-19 pandemic.
- **Feb. 18, 2021:** City staff held a conference call with Tribal Representatives to hear their preference for formal government-to-government consultations with the city during 2021. During the meeting, city staff and Tribal Nations agreed to conduct an online consultation in April 2021 to discuss an updated MOU, a final renaming recommendation for Settler's Park and a proposed land acknowledgment.
- **April 2021:** Tribal Representatives and city staff consulted on a proposed, updated MOU and renamed Settler's Park in west Boulder to [The Peoples' Crossing](#). Staff and Tribal Representatives also agreed to establish a city-Tribal Nation working group to help develop education and interpretation materials and plan events to celebrate The Peoples' Crossing name change. Tribal Representatives also provided guidance on a

draft land acknowledgment.

- **September 2022:** City staff and Tribal Representatives continued discussing a proposed, updated city-Tribal Nation MOU. Tribal Representatives also provided guidance on public events to celebrate the renaming of The Peoples' Crossing.
- **March 2023:** Tribal Representatives and city staff reached consensus on a proposed, updated MOU and participated in site visits to city-managed open space. During a site visit to The Peoples' Crossing in west Boulder, Tribal Representatives and city staff removed inaccurate and dated signs as part of an ongoing collaborative effort to update Indigenous-related interpretative signage on city open space and continue fulfilling the Indigenous Peoples Day Resolution.

Federal, State and City Consultation Requirements

There are no specific federal or state laws that require the City of Boulder to engage/consult with Tribal Nations. It is our best understanding that City of Boulder is one of only a few municipalities that initiate and participate in ongoing consultation with Tribal Nations. While there is no law or ordinance requiring the city to engage or consult with federally recognized Tribal Nations, specific direction for ongoing consultation and conversations with Tribal Nations come from:

- Previous [government-to-government consultations](#) and meetings with Tribal Representatives.
- Four existing [agreements](#) the city shares with Tribal Nations. These agreements, which focus on city open space, were initially developed in the late 1990s and early 2000s.
- A city [staff land acknowledgment](#) based on the city's Indigenous Peoples Day Resolution and further developed with guidance and input from American Indian Tribal Nations and the Boulder community.
- The city's [2016 Indigenous Peoples Day Resolution](#). The resolution led to the recent renaming of Settler's Park to The Peoples' Crossing and also directs the city to "correct omissions of the Native American presence in public places, resources and cultural programming." In addition, the resolution directs city staff to implement "accurate curricula relevant to the traditions, history and current issues of Indigenous People inclusive of and as part of our shared history."
- The [OSMP Master Plan](#), which directs the department to "support citywide efforts to work in partnership with federally recognized American Indian Tribal Nations and other city departments through formal government-to-government consultations to help support American Indian Tribes and Indigenous Peoples' connections to their ancestral homelands."
- The [Boulder Valley Comprehensive Plan](#), which states that the city follows a government-to-government consultation process with Tribal Nations. The plan also recognizes that meaningful engagement with Tribal Nations needs to also happen at a regional level.

Tribal Sovereignty

Sovereignty for Native peoples has existed since time immemorial, pre-dating the U.S. Constitution.ⁱ Federally recognized American Indian and Alaska Native Tribal Nations are governments and their special relationship with the United States is recognized under the Constitution of the United States, treaties, statutes, Executive Orders and Supreme Court decisions.ⁱⁱ The unique legal status of Tribal Governments requires that official relations with federal agencies to be conducted on a government-to-government basis – a framework that the City of Boulder and other municipalities follow.

Tribal Engagement and Consultation Framework

City staff recognize the importance of honoring Tribal sovereignty and self-determination and conducting ongoing government-to-government engagement and consultation conversations with Tribal Nations. The city's engagement and consultation framework with federally recognized American Indian Tribal Nations is based on:

- State of Colorado guidance on Tribal Nations with a historic connection to the state.
- Federal and state frameworks for government-to-government relationships, in which federally recognized Tribal Governments appoint Representatives to speak on their behalf.
- Guidance provided by Tribal Representatives during past and ongoing consultations.
- Existing Memorandums of Understandings with Tribal Nations, which were developed in the late 1990s and early 2000s.

While the City of Boulder has a framework for consultation with federally recognized American Indian Tribal Nations, city staff also recognize the importance of collaborating with local Indigenous communities and organizations in the Boulder area. Current Tribal consultation does not preclude the city from conducting different collaboration processes with local Indigenous communities and organizations, and staff recognizes the need to work with regional partners to establish broader, community-wide Indigenous collaboration practices. The city also recognizes that the Latinx and Spanish-speaking community has communities who recognize and celebrate their Indigenous heritage, which should be honored as well.

Community Participation

As expected from government-to-government consultations, large, formal City-Tribal consultation and engagement meetings are closed to the public to facilitate conversations among city staff, Tribal Representatives and elected and appointed community leaders that may include sensitive topics such as cultural resources. However, due to public interest, the city develops information for the community following large, formal consultations.

ANALYSIS

If approved, the City of Boulder would become the fourth signatory to the MOU following Comanche Nation, Oglala Sioux Tribe, and Pawnee Nation. Additional Tribal partners who have participated in consultation and are now considering signing the MOU include:

- Apache Tribe of Oklahoma
- Cheyenne and Arapaho Tribes
- Cheyenne River Sioux Tribe
- Eastern Shoshone Tribe
- Jicarilla Apache Nation
- Kiowa Tribe of Oklahoma
- Northern Arapaho Tribe
- Northern Cheyenne Tribe
- Rosebud Sioux Tribe
- Southern Ute Indian Tribe
- Standing Rock Sioux Tribe
- Ute Mountain Ute Tribe
- Ute Indian Tribe of the Uintah & Ouray Reservation

To aid Tribal Nations in their decision making, the City of Boulder created a graphic memo (**Attachment B**) and [video](#) for Tribal representatives and elected officials to review alongside the updated MOU itself.

Summary of Proposed MOU

The proposed, updated MOU seeks to set a foundation for future City-Tribal Nation collaboration and help ensure ongoing government-to-government consultation and help support Tribal Nation input into OSMP public lands decision-making on topics of importance to Tribal Nations. The proposed MOU:

- **Consolidates and Updates Past City-Tribal MOUs:** Those MOUs resulted from Consultations in the 1990s and the early 2000s. City consultations initially began because of issues related to the construction of a National Institute of Standards and Technology building in south Boulder in the late 1990s. (Whereas Text and Section 11)
- **Helps Support City-Tribal Nation Decision-Making:** Tribal Representatives have a unique capacity to provide guidance concerning land management, cultural resources management, ceremonial needs, and Indigenous education and interpretation. The proposed MOU commits the city to supporting Tribal Nation input on decision-making relating to city-managed OSMPs lands. (Whereas Text and Section 3)
- **Recognizes open space purposes in City Charter:** “Tribal Nations and the City shall work together to uphold and support the open space purposes,” such as natural land preservation and passive recreation. (Whereas Text and Section 1)
- **Invites Ongoing Cultural Resource Consultations:** This work would identify and protect areas of traditional, cultural and spiritual significance and help interpret cultural resources on OSMP land. The city also agrees to provide Tribes with the opportunity to review known or suspected Indigenous cultural materials and objects currently held by the city and will seek Tribal Nation input on a planned Cultural Resources Management Plan (Section 5).

- **Requires Notification of Inadvertent Discoveries:** In the event of the inadvertent exposure or disturbance of human remains, objects of cultural significance or patrimony, sacred objects, or associated or unassociated funerary objects on OSMP Land, the City shall comply with the requirements of the Native American Graves Protection and Repatriation Act, 25 U.S.C.A. § 3001 or the State Unmarked Burial Process C.R.S. §§ 24-80-1301, whichever jurisdictional authority applies. (Section 5(g))
- **Continues Tribal Nation Ceremonial Access:** Upholds a permit process for ceremonies that require the building of a temporary structure – for example, a sweat lodge or tipi – or that involve the use of fire. The MOU details specific Tribal groups that can seek a permit for a ceremony involving fire and a temporary structure, and outlines requirements that have been discussed as part of 2004, 2021 and 2022 Consultations. (Section 6)
- **Exploring Other Ceremonial Needs:** The city agrees to explore the possibility of a dedicated, permanent site on city lands for use in sacred ceremonies and to consider the limited harvesting of plants or materials for medicinal use. The city also agrees to identify city land that can be used for limited collection for personal use, utilizing a process that will be the subject of a future consultation and will be implemented after agreement by the Tribes and the city. (Sections 7 and 8)
- **Supports City-Tribal Nation Education Collaboration:** Continues work to provide accurate educational information about the history and culture of each respective Tribe. This will develop truthful Indigenous Peoples’ stories – both past and present – through educational materials, such as educational curriculum and signage. The city is developing an ethnographic report with Tribal Nations to help fulfill this section. (Section 9)
- **Allows Future Changes:** The proposed MOU provides a structure for the city and Tribal Nations to propose new amendments, which can lay the groundwork for future collaborative opportunities and partnerships. (Section 10)
- **Welcomes other Tribal Nations to join the MOU:** Other federally recognized Tribal Nations not part of previous consultations may sign on to the MOU and participate in ongoing consultations and conversations with the City of Boulder. (Section 2)

NEXT STEPS

If the City Council approves the MOU, city staff will proceed with developing any additional required processes to fulfill its provisions. Engagement with the Tribes will continue as outlined through formal consultation, working group activities, [a Tribal Nation ethnographic-education report](#) development of the OSMP Cultural Resource Management Plan and ongoing collaboration with Arapaho and Cheyenne Nations for city-managed that is associated with the events of [the Sand Creek Massacre](#). The next

immediate event with Tribal representatives will take place March 14, 2024, when we will formally celebrate the renaming of the Peoples' Crossing and offer a public event to learn more about our Tribal partners and our relationships. Invitations to council members for these events are coming soon.

ATTACHMENT(S)

- **Attachment A:** Proposed Memorandum of Understanding
- **Attachment B:** City of Boulder-Tribal Nation Memorandum of Understanding Graphic Memo

State-Tribal Consultation Guide: An Introduction for Colorado State Agencies to Conducting Formal Consultations with Federally Recognized American Indian Tribes. (2014). <https://bldr.fyi/consultation-guide>

ⁱⁱ Memorandum on Uniform Standards for Tribal Consultation, Nov. 30, 2022, <https://bldr.fyi/consultation-memorandum>

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("Agreement"), made effective this of _____, 2024, and consolidates previous agreements made the 14th day of August, 2002, as amended January 3, 2004, by and between The Apache Tribe of Oklahoma, The Cheyenne and Arapaho Tribes, The Cheyenne River Sioux Tribe, The Comanche Nation, The Eastern Shoshone Tribe, The Jicarilla Apache Nation, The Kiowa Tribe, The Northern Arapaho Tribe, The Northern Cheyenne Tribe, The Oglala Sioux Tribe, The Pawnee Nation, The Rosebud Sioux Tribe, The Southern Ute Indian Tribe, The Standing Rock Sioux Tribe, The Ute Mountain Ute Tribe, The Ute Indian Tribe of the Uintah & Ouray Reservation ("Tribes") and the City of Boulder (the "City"),

WITNESSETH:

WHEREAS, the City of Boulder acknowledges Tribes have had a significant presence on City lands since time immemorial – including on City Open Space and Mountain Parks land; and

WHEREAS, the City's Indigenous People Day Resolution and its land acknowledgement recognize the City has benefited and continues to benefit directly from the colonization of Indigenous lands and from removal policies that violated human rights, broke government treaties and forced Indigenous Peoples from their homelands; and

WHEREAS, the City recognizes that Indigenous knowledge, oral histories and languages – handed down through generations over thousands of years – have shaped profound cultural and spiritual connections with Boulder-area lands and ecosystems and that those connections are sustained and celebrated to this day; and

WHEREAS, Tribal Representatives have provided critical guidance in helping the City to update past agreements and to begin work to help fulfill the City's land acknowledgement, its Indigenous Peoples Day Resolution and the City's Racial Equity Plan; and

WHEREAS, the City's Open Space and Mountain Parks Master Plan directs the department to support citywide efforts to work in partnership with federally recognized American Indian Tribes and other City departments through formal government-to-government consultations to support American Indian Tribes and Indigenous Peoples' connections to their ancestral homelands; and

WHEREAS, the City is trustee of the Open Space and Mountain Parks land; and

WHEREAS, Section 176 of the City Charter limits the use of Open Space and Mountain Parks land as follows:

Open space land shall be acquired, maintained, preserved, retained, and used only for the following purposes:

- a) Preservation or restoration of natural areas characterized by or including terrain, geologic formations, flora, or fauna that are unusual, spectacular, historically important, scientifically

- valuable, or unique, or that represent outstanding or rare examples of native species;
- b) Preservation of water resources in their natural or traditional state, scenic areas or vistas, wildlife habitats, or fragile ecosystems;
 - c) Preservation of land for passive recreational use, such as hiking, photography or nature studies, and, if specifically designated, bicycling, horseback riding, or fishing;
 - d) Preservation of agricultural uses and land suitable for agricultural production;
 - e) Utilization of land for shaping the development of the City, limiting urban sprawl, and disciplining growth;
 - f) Utilization of non-urban land for spatial definition of urban areas;
 - g) Utilization of land to prevent encroachment on floodplains; and
 - h) Preservation of land for its aesthetic or passive recreational value and its contribution to the quality of life of the community.

Open space land may not be improved after acquisition unless such improvements are necessary to protect or maintain the land or to provide for passive recreational, open agricultural, or wildlife habitat use of the land.

WHEREAS, Tribal Representatives have a unique capacity to gather information and convey advice concerning land management, cultural resources management, ceremonial needs, and Indigenous education and interpretation; and

WHEREAS, the City is committed to the preservation of its Open Space and Mountain Parks land and the cultural resources located thereon and desires to protect traditional, naturally significant places, and sacred areas of religious, cultural significance and sensitivity to the Tribes; and

WHEREAS, no party is obligated by this Agreement to any expenditure of funds or any participation in litigation; and

WHEREAS, the Tribes and the City seek by this Agreement to continue a partnership to ensure ongoing consultation and collaborative decision-making regarding Open Space and Mountain Parks land and help protect any cultural resources that may exist on Open Space and Mountain Parks land; and

WHEREAS, the City seeks to update and consolidate past agreements with Tribal Nations – which were developed in the late 1990s and early 2000s and that focus on open space the City manages – based on guidance provided at City/Tribal Nation consultations in 2019, 2021 and 2022, and at City/Tribal Nation working group meetings in 2019; and

WHEREAS, the City and Tribes wish to provide a process for federally-recognized tribes that are

not a party to this Agreement to join this Agreement and participate in ongoing consultations to provide guidance regarding land management, cultural resource preservation, ceremonial access, and Indigenous education and interpretation.

NOW, THEREFORE, the parties hereby agree as follows:

- (1) The Tribes and the City shall work together to uphold and support the open space Charter purposes.
- (2) Initially, this Agreement shall be binding on the City and the Tribes that execute it, and the City and additional, non-signatory tribes may be added as parties to this Agreement with the consent of at least half of the signatory Tribes.
- (3) The City agrees to support tribal input on decision-making relating to the City's Open Space and Mountain Parks land. The City will provide the Tribes with an opportunity to meet with members of the Open Space Board of Trustees and that whenever feasible such meetings will coincide with any planned government-to-government consultations.
- (4) The City agrees, subject to annual budget appropriations, to consistently host formal government-to-government consultations in Boulder with the Tribes to facilitate the ongoing consultation contemplated by this Agreement. It is the desire of both the City and the Tribes to let no more than four years lapse between consultations.
- (5) The Tribes and the City agree to an ongoing consultation about cultural resources on Open Space and Mountain Parks lands for the purpose of identifying and protecting areas of religious and cultural significance and interpreting cultural resources in the area. Specifically,
 - a. The City agrees to provide Tribes with the opportunity to review known or presumed Native American cultural materials and objects currently held by the City.
 - b. The Tribes agree to provide cultural resource evaluation and advice in support of Open Space and Mountain Parks land acquisition and management in accordance with the City Charter.
 - c. The Open Space and Mountain Parks department shall seek tribal input in its development of a future Cultural Resources Management Plan ("CRMP") that will include, but not be limited to the following elements:
 - i. A framework for the City and the Tribes to identify and protect significant landscape features and areas of special concern, including but not limited to, the Jewel Mountain Open Space Area, ("Areas of Special Concern"). The definition of "features" and "areas" shall be defined in the CRMP and will include, but may not be limited to sites, structures, views, flora and fauna communities, and other features of traditional, religious and cultural significance to the Tribes ("Cultural Resources").

- ii. Except in cases of emergency, a process to notify the Tribes and provide the opportunity to review substantial ground-disturbing City projects and research that have the potential to affect Cultural Resources in Areas of Special Concern (“Projects”). Projects include, but are not limited to, constructed trails; parking lots; plowing or cultivating; intentional burning; and mineral extraction. Generally, this process will include, but not be limited to the following elements (as will be set forth in the CRMP):
 - A. Written notification of a proposed Project to the Tribes will be provided once sufficient Project details are known.
 - B. 45-day response period for Tribes to express concerns or intention to comment on the Project. The City will attempt additional notification, including phone calls and e-mails, during this period for those Tribes that have not responded and will follow up with those who expressed intent to comment.
 - C. If one or more Tribes raise concerns about a proposed Project, the City and the Tribes who have expressed concerns agree to consult to resolve those concerns prior to the commencement of such Project. The City shall not authorize the Project unless the consulting Tribes achieve consensus as defined in consultation.
 - D. If a Tribe has not responded with concerns or intention to comment in 45 days, the City will presume that the Tribe has no concern.
 - E. “Emergency” shall be defined as a situation that poses a serious and imminent threat to the health, safety, or welfare of persons, property, flora and fauna, or the community including but not limited to wildfire or flood. In the event of such Emergency, the City shall notify the Tribes as soon as reasonably practicable. Restoration Projects shall follow the process outlined in this section following the Emergency.
 - F. The City does not own all mineral and property rights in and under City Open Space land. If the City becomes aware of a third-party proposed project taking place on or that could affect an Area of Special Concern, the City will notify the Tribes of the project and provide available contact information for the third-party and will notify the third-party of this Agreement. In the event of mineral extraction projects on any Open Space land the City will notify the Tribes of the project.
- d. In the event of the inadvertent exposure or disturbance of human remains, objects of cultural significance or patrimony, sacred objects, or associated or unassociated funerary objects, the City shall comply with the requirements of the Native American Graves Protection and Repatriation Act, 25 U.S.C.A. § 3001 or the State Unmarked Burial Process, C.R.S. §§ 24-80-1301 et. seq., whichever jurisdictional authority

applies.

- (6) City agrees that the Tribes need no prior permission for pedestrian use of Open Space and Mountain Parks land. Ceremonies requiring the building of a temporary structure (for example, a sweat lodge or tipi) or that involve the use of fire, however, do require permission from the City. The permit procedure for ceremonies requiring a temporary structure or that involve the use of fire is as follows:
- a. The following persons may apply for permission to use Open Space and Mountain Parks land for traditional use ceremonies requiring structures or a fire:
 - i. Enrolled members of the Tribes.
 - ii. Tribal-authorized applicant through written acknowledgment by one of the Tribes on tribal letterhead, including, but not limited to, descendants of members of federally-recognized tribes.
 - iii. Individuals or groups supported by a regional Chapter of the Native American Church as long as a membership card is provided.
 - b. All ceremonial access must follow all applicable federal laws and Supreme Court decisions, including the American Indian Religious Freedom Act and the Religious Freedom Restoration Act.
 - c. In most circumstances, at least 15 days prior to the ceremony, a letter of request from an individual listed in subsection (a) above must be submitted to the Director of Open Space and Mountain Parks, 2520 55th Street, Boulder, CO, 80301, outlining the location, activity, the number of people expected to attend; the duration of the activity; and how issues of safety, environmental hazards, restoration of the use area and parking will be addressed. However, in some circumstances, an expedited request may be submitted.
 - d. The City shall notify the requesting individual from subsection (a) above of permit approval or denial in writing within 7 business days of the request, with any restrictions or conditions included in the permit, except that the City provide an expedited response when an expedited request is submitted. In the event the City denies the request, the City will provide the reasoning for the denial and work cooperatively to resolve the issues. The City will approve only requests from a person or group identified in subparagraph (a) above, providing it involves no monetary gain whatsoever, does not interfere with previously scheduled activities, and does not conflict with the City Charter.
 - e. There will be no cutting of trees or any other destruction of vegetation allowed. Individuals must provide their own wood in accordance with any requirements of the permit.

- f. The City agrees to provide reasonable fire protection services for any authorized Tribal ceremonial use on City land.
 - g. Such fire protection may include fire extinguishers, wildfire suppression apparatus or other preventative measures.
 - h. To the extent possible, the City will work together with the requestor to support any necessary logistical needs. For example, arranging for drinking water or portable toilets, or addressing parking needs.
 - i. With respect to Open Space and Mountain Parks, no permanent structures will be permitted. Temporary structures must be removed within seven days after the ceremony is concluded or other time period as may be required by the permit. Those using the site will be responsible for leaving the area in the same condition as they found it.
- (7) The City agrees to explore the possibility of a dedicated, permanent site on any City lands for use in sacred ceremonies.
- (8) The City is committed to considering limited collection requests for personal use, for example for limited harvesting plants or materials for medicinal use, and will develop a process to consider such requests. The City also agrees to identifying City land that can be used for limited collection for personal use utilizing a process that will be the subject of a future Consultation and will be implemented after agreement by the Tribes and the City.
- (9) The City and the Tribes agree to work together to provide accurate educational information about the history of each respective Tribe and other Indigenous Peoples in Boulder and Jefferson Counties. This continuous, ongoing work will include accurate, truthful Indigenous Peoples stories, both past and present, through educational and interpretative materials, such as signage and education curriculum.
- (10) The parties agree to review this Agreement from time to time as necessary, but no less than at any consultation held between the City and the Tribes. At any time, a signatory may request review of this agreement by all parties for the purposes of amending the Agreement. Except for adding Tribes as set forth in section 2, proposed amendments to this Agreement must be unanimously supported by all signatories and evidenced in a written, signed Agreement.
- (11) This Agreement supplants and replaces pre-existing memorandums and amendments by the Parties concerning matters of a similar nature, including prior Memorandums of Understanding and associated amendments dated March 1, 1999; August 14, 2002; and January 3, 2004.
- (12) This Agreement shall be for a term of five years from the date this Agreement is fully executed. Upon unanimous consent of the parties, this Agreement will automatically renew for an additional five years. The City will provide written notice of the expiration of this Agreement 60 days prior to the expiration, at which time the parties will provide written consent to renewal or not.

AGREED, as of the date first above written.

[SIGNATURE PAGES FOLLOW]

**CITY OF BOULDER,
a Colorado home rule City**

Nuria Rivera-Vandermyde, City
Manager

Attest:

City Clerk

Approved as to form:

City Attorney's Office

THE APACHE TRIBE OF OKLAHOMA

Date

By: _____
Print Name

THE CHEYENNE AND ARAPAHO TRIBES – SOUTHERN CHEYENNE

Date

By: _____
Print Name

THE CHEYENNE AND ARAPAHO TRIBES – SOUTHERN ARAPAHO

Date

By: _____
Print Name

THE CHEYENNE RIVER SIOUX TRIBE

Date

By: _____
Print Name

THE COMANCHE NATION

Date

By: _____
Print Name

THE EASTERN SHOSHONE TRIBE

Date

By: _____
Print Name

THE JICARILLA APACHE NATION

Date

By: _____
Print Name

THE KIOWA TRIBE

Date

By: _____
Print Name

THE NORTHERN ARAPAHO TRIBE

Date

By: _____
Print Name

THE NORTHERN CHEYENNE TRIBE

Date

By: _____
Print Name

THE OGLALA SIOUX TRIBE

Date

By: _____
Print Name

THE PAWNEE NATION

Date

By: _____
Print Name

THE ROSEBUD SIOUX TRIBE

Date

By: _____
Print Name

THE SOUTHERN UTE INDIAN TRIBE

Date

By: _____
Print Name

THE STANDING ROCK SIOUX TRIBE

Date

By: _____
Print Name

THE UTE MOUNTAIN UTE TRIBE

Date

By: _____ Print Name

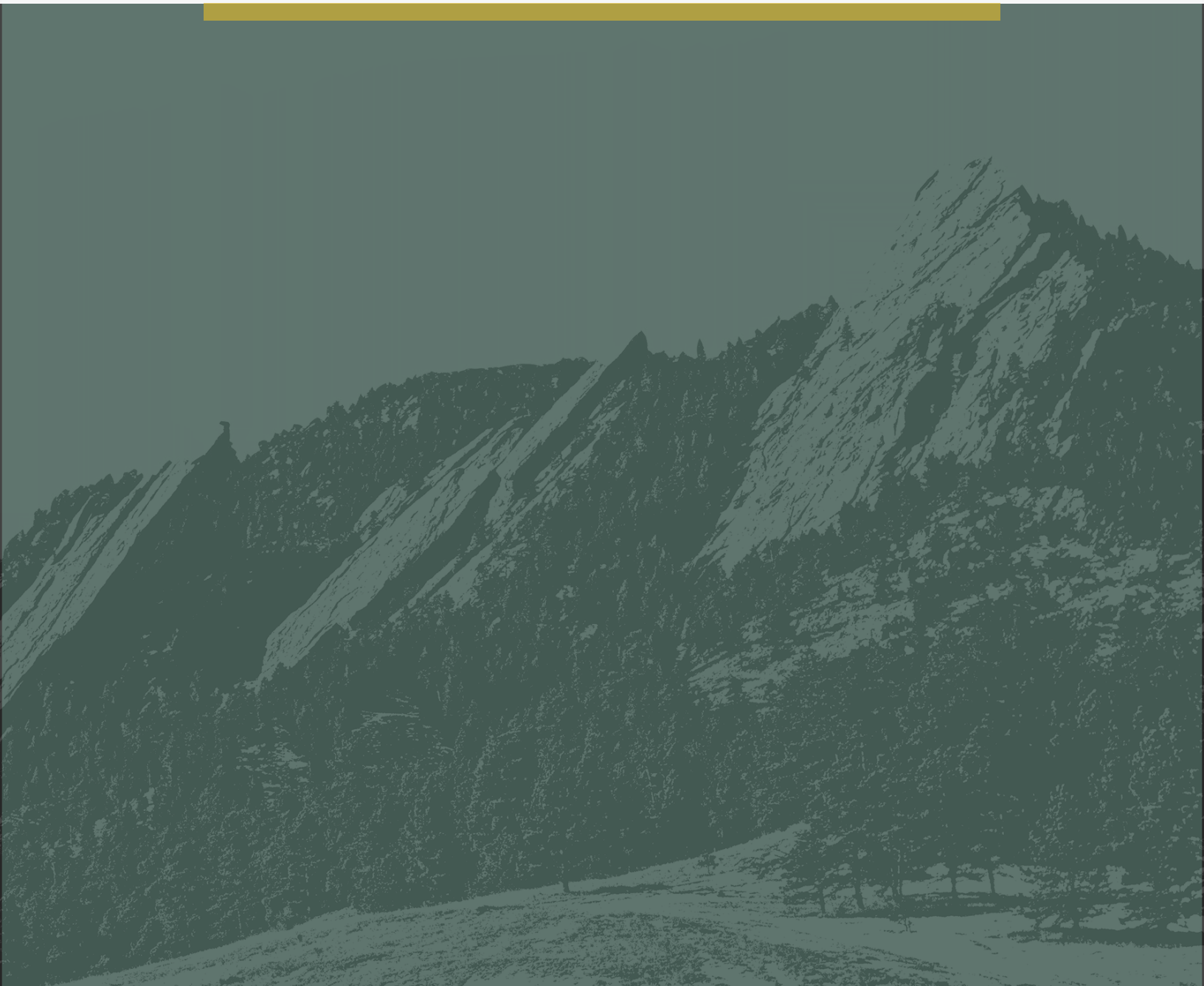
THE UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION

Date

By: _____ Print Name

City of Boulder-Tribal Nation

Proposed Memorandum of Understanding (MOU)



Content

- 03** City Manager Letter
- 04** Thank You for Participating in 2023 Consultation
- 05** Focus of Proposed Memorandum of Understanding
- 06** Summary of Proposed Memorandum of Understanding
- 08** Overview of Existing City-Tribal Nation Agreements
- 09** Past Consultations to Develop Proposed MOU
- 10** Current City Projects with Tribal Nation Guidance
- 11** Contact Information Regarding MOU

Letter from the City Manager

City of Boulder staff extend our gratitude to federally recognized American Indian Tribal Nations for the opportunity to listen and learn from Tribal Representatives and to work on several ongoing projects with Tribal Representatives. Since 2019, [Tribal Representatives and City of Boulder staff have been working together on a proposed Memorandum of Understanding](#) (MOU).

Their work has resulted in a proposed MOU that consolidates past City-Tribal Nation agreements and seeks to ensure ongoing Consultation and collaborative decision-making regarding City-managed Open Space and Mountain Parks public lands. The proposed MOU also provides a framework for future collaborative opportunities with Tribal Nations across city departments and with regional partners.

City of Boulder staff have developed this memo to assist Tribal Nations in their evaluation of whether to sign the proposed MOU. The latest version of the MOU – which was revised with Tribal Representative guidance at the March 15-March 16, 2023 Consultation in Boulder – has been included in a separate attachment that Jessica Yaquinto with Living Heritage Anthropology sent to your Nations. The city also has included a copies of the MOU with edits from Consultations in 2021, 2022 and 2023, along with past city-Tribal Nation MOUs

The [city acknowledges city-managed open space lands](#) are on the ancestral homelands and unceded territory of Indigenous Peoples who have traversed, lived in and stewarded lands in the Boulder Valley since time immemorial. We appreciate and understand that Indigenous knowledge, oral histories, and languages – handed down through generations over thousands of years – have shaped profound cultural and spiritual connections with Boulder-area lands and ecosystems and that those connections are sustained and celebrated to this day.

We know we have much to learn from Tribal Nations regarding land stewardship, cultural resource preservation, Indigenous ceremonial needs, and Indigenous education and interpretation on city-managed lands. While city staff and Tribal Representatives are taking steps to address several of those topics, we believe the proposed MOU can help lay the groundwork for even more progress in the future.

If your Nation is ready to sign the proposed MOU, please have your authorized representative sign the MOU that also has been sent as a separate attachment to this memo. Electronic signatures on the clean MOU PDF (with no edits) can be emailed to **Jessica Yaquinto** with Living Heritage Anthropology and **Phillip Yates** with the City of Boulder. Signed paper copies of the MOU can be sent to Phillip Yates. Jessica and Phillip's contact information is on **page 11** of this memo. If you have additional questions or concerns regarding the MOU, please contact Jessica and Phillip. The City of Boulder again thanks Tribal Nations for participating in City Consultations and looks forward to continuing collaboration with your Nations in the future.

Sincerely,

Nuria Rivera-Vandermyde, City Manager, City of Boulder

Thank You, Tribal Representatives

City of Boulder staff extend our gratitude to Tribal Representatives from federally recognized American Indian Tribal Nations for participating in the in-person Consultation in Boulder on **Wednesday, March 15, and Thursday, March 16, 2023**. The 2023 Consultation primarily focused on the proposed MOU and site visits to city-managed open space areas. The words and guidance Tribal Representatives have provided during the March Consultation – and past Consultations and Working Group meetings with Tribal Representatives – have left a deep impression on city staff, and City Council and Board members, and we look forward to continuing opportunities to listen and learn from your Nations in the future.



City staff appreciated the insightful guidance Tribal Representatives provided and the time spent discussing and revising the proposed MOU during the 2023 Consultation.



Tribal Representatives and Comanche and Lakota children helped remove signs at The Peoples' Crossing. In February, city staff received guidance from Tribal Representatives to remove them.



Consultation participants visited The Peoples' Crossing – an area Tribal Representatives renamed in 2021 – as part of ongoing city-Tribal Nation education and interpretation collaboration.



During the Consultation, Tribal Representatives, City Council Members, city staff and city consultants visited the Jewell Mountain Open Space area – an area with known Indigenous cultural resources.

Focus of Proposed MOU

The proposed Memorandum of Understanding (MOU) focuses on City-managed [Open Space and Mountain Parks lands](#) and seeks to ensure ongoing Consultation and collaborative City-Tribal Nation decision-making regarding those natural areas. The proposed MOU and future Tribal Nation guidance also will help provide a foundation for how the City can discuss future collaborative opportunities with Tribal Nations – such as community partnerships, educational initiatives and land management collaboration, including co-stewardship and co-management approaches.

Open space purposes [in the Boulder City Charter](#) – recognized in past MOUs and included in the proposed MOU – direct work the [Open Space and Mountain Parks Department \(OSMP\)](#) does on a daily basis. The [department's Master Plan](#), which the Boulder City Council adopted in 2019, provides additional guidance for how City staff manages city open space. The Master Plan directs the department to support Citywide efforts to work in partnership with federally recognized American Indian Tribal Nations and other City departments to help support Tribal Nations and Indigenous Peoples’ connections to their ancestral homelands.



46,600 acres

The total amount of land the Open Space and Mountain Parks (OSMP) Department conserves and manages.

The Great Plains and Southern Rocky Mountains merge dramatically in Boulder, creating natural areas with high biodiversity and remarkable scenic views.



City-managed open space helps protect **61 species of mammals.**



~ 5.5 million

The estimated number of visits the Open Space and Mountain Parks (OSMP) receives each year. City-managed lands receive more visits than many National Parks.



OSMP helps provide habitat for **741** plant species.



OSMP also helps protect **303** native bird and **138** native butterfly species.



OSMP manages about **15,000** acres of agricultural land.



OSMP has a **\$36.2 million** budget and 128 full-time employees.

Summary of the Proposed MOU

The proposed Memorandum of Understanding (MOU) seeks to set a foundation for future City-Tribal Nation collaboration and help ensure ongoing Consultation and support Tribal Nation input into Open Space and Mountain Parks public lands decision-making.

Consolidates and Updates Past City-Tribal MOUs



The proposed Memorandum of Understanding (MOU) will consolidate four MOUs the City of Boulder shares with federally recognized American Indian Tribes. Those MOUs resulted from Consultations in the 1990s and the early 2000s. City Consultations initially began because of issues related to the construction of a National Institute of Standards and Technology building in south Boulder in the late 1990s. **(See *Whereas Text and Section 11*)**

Helps Support City-Tribal Nation Decision-Making



The proposed MOU recognizes Tribal Representatives have a unique capacity to provide guidance concerning land management, cultural resources management, ceremonial needs, and Indigenous education and interpretation. The proposed MOU commits the City to supporting Tribal Nation input on decision-making relating to City-managed Open Space and Mountain Parks lands. **(See *Whereas Text and Section 3*)**

Recognizes Open Space Purposes in City Charter



Like all other MOUs the City shares with Tribal Nations, the proposed MOU recognizes that City-managed open space land shall “be acquired, maintained, preserved, retained, and used only for specific purposes in the City Charter.” The proposed MOU states: “Tribal Nations and the City shall work together to uphold and support the open space purposes,” such as natural land preservation and passive recreation. **(See *Whereas Text and Section 1*)**

Invites Ongoing Cultural Resource Consultations



The proposed MOU continues to invite Tribal Nations to ongoing Consultations to identify and protect areas of traditional, cultural and spiritual significance and help interpret cultural resources. The City also agrees to provide Tribes with the opportunity to review known or suspected Indigenous cultural materials and objects currently held by the city. The City also will seek Tribal Nation input on a planned Cultural Resources Management Plan **(See *Section 5*)**.

If your Nation is ready to sign the proposed MOU, please have your authorized representative sign the MOU that also has been sent as a separate attachment to this memo. Electronic signatures on the clean MOU PDF can be emailed to **Jessica Yaquinto** with Living Heritage Anthropology and **Phillip Yates** with the City of Boulder. Signed paper copies of the MOU can be mailed to Phillip Yates. Their contact information **on page 11** of this memo.

Requires Notification of Inadvertent Discoveries

In the event of the inadvertent exposure or disturbance of human remains, objects of cultural significance or patrimony, sacred objects, or associated or unassociated funerary objects, the City shall comply with the requirements of the Native American Graves Protection and Repatriation Act, 25 U.S.C.A. § 3001 or the State Unmarked Burial Process C.R.S. §§ 24-80-1301, whichever jurisdictional authority applies. **(See Section 5(g))**

Continues Tribal Nation Ceremonial Access

The proposed MOU continues a permit process for ceremonies that require the building of a temporary structure – for example, a sweat lodge or tipi – or that involve the use of fire. The MOU details specific Tribal groups that can seek a permit for a ceremony involving fire and a temporary structure, and outlines requirements that have been discussed as part of 2004, 2021 and 2022 Consultations. **(See Section 6)**

Commits City to Exploring Other Ceremonial Needs

The City agrees to explore the possibility of a dedicated, permanent site on any City lands for use in sacred ceremonies and to consider the limited harvesting of plants or materials for medicinal use. The City also agrees to identify City land that can be used for limited collection for personal use, utilizing a process that will be the subject of a future Consultation and will be implemented after agreement by the Tribes and the City. **(See Sections 7 and 8)**

Supports City-Tribal Nation Education Collaboration

The proposed MOU seeks continuing City-Tribal Nation collaboration to provide accurate educational information about the history and culture of each respective Tribe. This ongoing work will develop accurate, truthful Indigenous Peoples' stories – both past and present – through educational materials, such as educational curriculum and signage. The City is developing a report with Tribal Nations to help fulfill this section. **(See Section 9)**

Allows Future Changes: The proposed MOU provides a structure for the City and Tribal Nations to propose new amendments, which can lay the groundwork for future collaborative opportunities and partnerships.

Welcomes other Tribal Nations to join the MOU: The proposed MOU welcomes other federally recognized Tribal Nations not party to the MOU to join it and participate in ongoing Consultations and conversations with the City of Boulder.

Existing City-Tribal Nation MOUs



[1999 Memorandum of Understanding - A](#)

The City of Boulder and American Indian Tribal Nations agreed to create a spiritual, moral and policy partnership to protect land south of Boulder. [Read the MOU online.](#)



[1999 Memorandum of Understanding - B](#)

The City of Boulder and Tribal Nations agreed to obtain approval for a City-administered utility easement for an area in south Boulder and to provide for a tribal monitor during then-proposed, ground-disturbing work. The City also agreed to provide reasonable fire protection services for permitted tribal cultural use of a protected area during fire bans. [Read the MOU online.](#)



[2002 Memorandum of Understanding](#)

The 2002 MOU provides the critical foundation for the proposed MOU, which has been discussed at City Consultations in 2019, 2021, 2022 and 2023. [Read the MOU online.](#) The 2002 MOU outlined several City-Tribal Nation agreements, including:

- Tribal Representatives and the City would participate in an ongoing Consultation about cultural resources for the purpose of identifying and protecting areas of religious and cultural significance and recognizing cultural resources in the area.
- Ceremonies requiring the building of a temporary structure – for example, a sweat lodge or tipi – require permission from the City. The proposed MOU outlined a permit requirements procedure, which also is in the proposed MOU with Tribal Nations.
- Trails, parking lots, plowing or cultivating, intentional burning, and mineral extraction, to the extent of City mineral ownership, on the Jewel Mountain Open Space Area shall be reviewed by the Tribes prior to authorization by the City.
- Inadvertent discovery of American Indian cultural resources on City-managed open space, including funerary objects and human remains, shall be reported to the Tribes and protected by the City until they can be reviewed by Tribal Nations.



[2004 Memorandum of Understanding Amendment](#)

The City and Tribal Nations agreed to update the procedures related to ceremonies involving fire and temporary structures – such as tipis and sweat lodges – on Valmont Butte east of Boulder. [Read the MOU online.](#)

Steps to Develop Proposed MOU

**March
2019**

City-Tribal Consultation

The Consultation ended with an agreement that existing MOUs – initially adopted in the late 1990s and early 2000s – needed to be updated. There was also agreement that a working group should be established to draft agreement updates that would be discussed at a future Consultation.

**May-Aug
2019**

2019 City-Tribal Working Group Meetings

The City hosted several meetings with Tribal Representatives between May and August 2019. Discussions during those working meetings helped shape the proposed Memorandum of Understanding (MOU).

**April 7,
2021**

City-Tribal Consultation

Tribal Representatives and City staff reviewed one-half of the proposed Memorandum of Understanding (MOU). During the Consultation, Tribal Representatives and City staff also renamed Settler's Park in west Boulder to The Peoples' Crossing, formed a working group to develop education and interpretation materials, and discussed a draft land acknowledgment.

**March 16,
2022**

City-Tribal Consultation

Tribal Representatives and City staff reviewed the other half of the proposed MOU. Changes made during ongoing Consultations are documented in the marked-up MOU.

**September
2022**

City-Tribal Consultations

During Consultations on **Sept. 12** and **Sept. 27**, there were conversations that led to several edits were incorporated into the proposed MOU.

**March 15-16,
2023**

City-Tribal Consultation

Conversations during the Consultation primarily focused on the section of the MOU (Section 5) that describes city efforts to identify and protect areas of traditional, cultural and religious significance to Tribal Nations through the development of a planned Cultural Resource Management Plan.

Current City Projects with Tribal Nation Guidance

Beyond conducting ongoing Consultations with Tribal Nations, City of Boulder staff are conducting several other projects with guidance from Tribal Representatives. More information on [related projects is available on the City of Boulder website](#).



Planned Ethnographic and Education Report

The report seeks to provide accurate Indigenous Peoples' stories – both past and present – and will be informed by in-person interviews with Tribal Representatives in Boulder. Development of the report, which will help develop future education and interpretative materials, has begun and is expected to be released to the public in early 2026. For more information, contact **Phillip Yates** at 303-349-2438 or yatesp@bouldercolorado.gov.



Fort Chambers - Poor Farm Management Plan

The City of Boulder extends its gratitude to the Cheyenne and Arapaho Tribes, the Northern Arapaho Tribe and the Northern Cheyenne Tribe for providing guidance [regarding the future of a city-managed property](#) that has a direct, local connection to the Sand Creek Massacre. City staff appreciate Tribal Representatives who shared guidance on the project at the 2023 consultation and for the personal perspectives Representatives shared at recent Boulder Indigenous Peoples Day events in Boulder.



Education/Interpretative Signs on Open Space

City Open Space and Mountain Parks and Communication and Engagement staff are receiving guidance on how to address dated Indigenous-related education and interpretative signs on the city's Open Space and Mountain Parks system. Tribal Representatives and Lakota and Comanche children helped remove signs at The Peoples' Crossing during a March 2023 consultation based on guidance Tribal Representatives provided during a Working Group meeting earlier in the year.

Contact Information

If your Nation is ready to sign the proposed MOU, please have your authorized representative sign the MOU that also has been sent as a separate attachment to this memo. Electronic signatures on the clean MOU PDF can be emailed to **Jessica Yaquinto** with Living Heritage Anthropology and **Phillip Yates** with the City of Boulder. Signed paper copies of the MOU can be mailed to **Phillip Yates** with the City of Boulder.

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