

Community Heritage Development Committee

February 1, 2022



TEXAS HISTORICAL COMMISSION

AGENDA
COMMUNITY HERITAGE DEVELOPMENT COMMITTEE

Hilton Austin
Room 400/402
500 East 4th Street
Austin, TX 78701
February 1, 2022
9:00 a.m.

This meeting of the THC Community Heritage Development Committee has been properly posted with the Secretary of State's Office according to the provisions of the Texas Open Meetings Act, Chapter 551, Texas Government Code. The members may discuss and/or take action on any of the items listed in the agenda.

1. **Call to Order** — *Committee Chairman Peterson*
 - A. Committee member introductions
 - B. Establish quorum
 - C. Recognize and/or excuse absences
2. **Consider approval of the October 28, 2021 committee meeting minutes** — *Committee Chairman Peterson*
3. **Consider approval of the application ranking and funding recommendations for the FY 2022 Certified Local Government Grants and allocation of available FY 2021 grant funds (item 13.2)** — *Committee Chairman Peterson*
4. **Consider authorization for Friends of the Texas Historical Commission to license DowntownTX.org and associated intellectual property as a pilot to a single organization with similar mission (item 13.3)** — *Committee Chairman Peterson*
5. **Community Heritage Development Division update and committee discussion** — *Patterson*
 - A. Update on 2022 Real Places Conference
 - B. Update on the Texas Main Street Program activities including staffing, and DowntownTX.org
 - C. Update on heritage tourism activities including Texas Heritage Trails Program
 - D. Update on the Certified Local Government activities including grants, training, and prospective CLGs
 - E. Update on the Texas Treasures Business Award including procedural adjustments
6. **Adjournment**

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Esther Brinkley at (512) 463-5768 at least four (4) business days prior to the meeting so that appropriate arrangements can be made.

TEXAS HISTORICAL COMMISSION

MINUTES COMMUNITY HERITAGE DEVELOPMENT COMMITTEE

DoubleTree Suites by Hilton Hotel
Bluebonnet Room
303 W 15th Street
Austin, TX 78701
October 28, 2021

Note: For the full text of action items, please contact the Texas Historical Commission at P.O. Box 12276, Austin, TX 78711 or call 512.463.6100.

1. Call to Order

The meeting of the Texas Historical Commission (THC) Community Heritage Development Committee was called to order by Committee Chairman Pete Peterson at 10:33 a.m.

A. Committee member introductions

Chairman Peterson welcomed everyone. Members in attendance in addition to the Chair, included Commissioners Donna Bahorich, Monica Zárate Burdette, Garrett Donnelly, Renee Dutia, and Daisy Sloan White.

B. Establish Quorum

Chairman Peterson noted a quorum was present.

C. Recognize and excuse absences

Chairman Peterson noted that Commissioner Lilia Garcia was absent. Commissioner Burdette moved to excuse her absence, seconded by Commissioner Donnelly. Motion passed unanimously.

2. Consider approval of the July 26, 2021 committee meeting minutes-*Committee Chairman Peterson*

Commissioner White moved, Commissioner Donnelly seconded, and the commission voted unanimously to approve the July 26, 2021 Community Heritage Development Committee meeting minutes.

3. Consider approval of designations of 2022 Texas Main Street Cities-*Committee Chairman Peterson*

Community Heritage Development division director Brad Patterson reported that both former Main Street cities, Conroe and Freeport, were scored by the Inter-Agency Council above the minimum to be recertified. Conroe, having significantly increased in population since its prior participation, would now re-enter as an urban program while Freeport is classified as a small city. Commissioner Donnelly asked about future performance benchmarks, to which Mr. Patterson outlined the reporting process required for the Main Street cities. Commissioner Burdette moved to recommend approval, Commissioner White seconded. The motion passed unanimously.

TEXAS HISTORICAL COMMISSION

4. Consider approval of the Texas Main Street Program, Associate Network for continued development and implementation-*Committee Chairman Peterson*

Mr. Patterson discussed the concerns expressed by Texas Downtown Association (TDA) with the proposed Associate Network, highlighting ways in which the programs and services are different but could be more collaborative. Commissioner Donnelly asked if there would be a time limit for participating cities while Commissioner Dutia made suggestions to survey for the needs of these cities. The Committee agreed that this could be established as a pilot project to learn from the initial participants in terms of sustainable workload for the division and to help determine further nuanced needs of the participants. Commissioner Donnelly moved that the committee recommend approval of the Texas Main Street Program, Associate Network. Commissioner White seconded. Commissioner Bahorich offered an amendment, seconded by Commissioner Burdette, that participating cities formally report back to the Commission for potential partnerships with the TDA or other entities: the amendment was accepted and the motion passed unanimously.

5. Consider authorization for Friends of the Texas Historical Commission to license DowntownTX.org and associated intellectual property to organizations with similar missions-*Committee Chairman Peterson*

Mr. Patterson explained that the contract would be between Georgia and the Friends of the Texas Historical Commission (Friends). Commissioners asked about the vendor; the logic behind the proposed fees; financial and legal risks to the Friends; the business model; and sustainability of the workload and associated costs on the THC. Suggestions were made to pass the software project off to a third-party. Questions were asked on how feedback would be collected and addressed by the software developers and commissioners requested that the feedback should be formalized, moving forward. Friends' executive director, Anjali Zutshi, mentioned that this project and the potential for licensing was part of the Still Water Foundation grant. Commissioner White moved to recommend authorization, seconded by Commissioner Burdette. Motion passed unanimously.

6. Community Heritage Development Division update and committee discussion-*Division Director Patterson*

Mr. Patterson provided an update on Real Places Conference taking place February 2 -4, 2022 in Austin. County Historical Commission outreach coordinator, Amy Hammons, was introduced as the new Texas Main Street State Coordinator. Staff reported that travel guide distribution is going well with Certified Folder. Mr. Patterson explained that staff has begun to collect data for market research on heritage tourism, in conjunction with Communications and Historic Sites Division staff. The upcoming grant application deadline for Certified Local Governments and the ongoing series of collaborative workshops with Texas Department of Transportation was discussed.

7. Adjournment

The meeting was adjourned at 11:42a.m.

Quarterly Report

Community Heritage Development (CHD) Division
October–December 2021

WORK IN COMMUNITIES

The communities participating in CHD's programs rely heavily on our staff expertise and guidance, which often must be delivered onsite.

In October and November, staff provided measurable assistance to all 10 trail regions and 32 communities. Assistance, or in some cases multiple incidents of assistance, was provided to **Amarillo, Beaumont, Caldwell, Corsicana, Dallas, Denton, Eagle Pass, Elgin, Ennis, Fort Worth, Galveston, Georgetown, Hamilton, Henderson, Houston, La Grange, Longview, Lubbock, Luling, McKinney, Mesquite, Mineral Wells, New Braunfels, Robstown, Rockwall, San Marcos, Seguin, Sherman, Stephenville, Taylor, Victoria, and Waco.**

HERITAGE TOURISM

This quarter, the Heritage Tourism program and Communications Division collaborated to strike a series of small but significant distribution deals with Certified Folder Display Services, Inc. (CF). CF maintains brochure racks in several thousand locations in Texas, primarily in hotels and restaurants but also in visitors centers and other public facilities across the state. Distribution plans were crafted individually for each of the travel guides to determine the most effective locations and amounts. The planned distribution is as follows:

Texas Heritage Travel Guide—22,625 among the Austin, Dallas, Houston, and San Antonio markets, servicing 530 distribution points

The Chisholm Trail: Exploring the Folklore and Legacy—7,400 among the Austin, Corpus Christi, Fort Worth, Kerrville, Rio Grande Valley, San Antonio, Temple, and Waco areas, servicing 1,256 distribution points, generally following the historic cattle trail routes from South Texas to Oklahoma

Forts Trail Region—21,200 among the Midland, Austin and San Antonio markets, servicing 562 distribution points

Hill Country Trail Region—30,400 among the Corpus Christi and San Antonio markets, servicing 295 distribution points

Pecos Trail Region—75,000 among the Austin, San Antonio, and Waco markets, servicing 680 distribution points

Tropical Trail Region—74,600 among the Houston, Galveston, San Antonio, and Victoria markets, servicing 600 distribution points

Working in coordination with Communications, the Heritage Tourism team successfully moved 106,175 copies of the English language *Hispanic Texans: Journey from Empire to Democracy* guide from the warehouse and into the hands of the traveling public. Newspaper insertions with the *Dallas Morning News* and three Spanish-language newspapers in the Rio Grande Valley; *McAllen Monitor*, *Valley Morning Star*, and *Brownsville Herald* occurred on Sunday, December 26. This represents our final push of 2021 to reduce brochure inventory in TxDOT's warehouse necessitated by a move to a smaller facility.

The TexasTimeTravel.com redesign is nearing completion. The vendor, Tempest, is completing content migration from the current platform into the new one, and the anticipated launch of the new site is on schedule for January 2022.

The Heritage Tourism team recently partnered with the Texas Main Street Program, Museum Services Program, and Historic Sites Division to acquire current consumer data to help identify our ideal heritage tourist. This new digital dashboard includes the Texas Heritage Trail Regions, the boundaries of

all Main Street districts, all state historic sites, and roughly 500 Texas museums. The dashboard places geofences around these sites and tracks consumers through their cell phone location services. Without revealing specific identities, the dashboard provides information on the number of visitors; frequency, length, and timing of visits; visitor origin; demographics; and much more. The data will be used to direct the THC's promotional efforts as well as that of our partners.

TEXAS TREASURE BUSINESS AWARDS

Improvements are coming to the Texas Treasure Business Award (TTBA). New TTBA procedures debuting on January 1 are designed to update and refresh the program while also boosting efficiency, creating milestones for more frequent promotion, and providing staff with new opportunities to share success stories. A new TTBA brochure is also being designed to aid in promoting the program across the state.

REAL PLACES 2022 VENUE CHANGE

Due to continued emergency management occupation of the Doubletree Hotel, Real Places 2022 was relocated to the downtown Hilton Austin. The new location is significantly more expensive; however, to keep costs for both the conference and attendees in check, negotiations yielded a \$55,000 relocation payment from the original hotel. Guest room and parking rates for attendees were negotiated to retain the conference discounts. The relocation required new contracts, altered menus, meeting room configurations, attendee notifications, new audio-visual vendors, and the transfer of guest reservations.

CERTIFIED LOCAL GOVERNMENT

The Certified Local Government (CLG) program received eight applications for the annual CLG grant round and eight applications for travel stipends to the National Alliance for Preservation Commissions' FORUM Conference in 2022. The applications were viewed and scored for the Commission's upcoming meeting. CLG staff also attended the annual National Trust's Past Forward and Association for Preservation Technology conferences this quarter and conducted several trainings, including a virtual training with TxDOT and the History Programs Division on Section 106 and how CLGs can work with TxDOT.

MAIN STREET CITIES AND CONSTITUENTS WIN PRESTIGIOUS AWARDS

Congratulations to the following projects, organizations, and individuals in Main Street cities that were named Texas Downtown Association 2021 President's Award winners.

Best Commercial Interior

- Dwell, **Goliad**
- Café 1948, **Tyler**

Best Renovation/Rehabilitation/Restoration

- Sinclair Market and Convenience Store, **Winnsboro**
- The Monte and Amy Allen House, **Harlingen**

Best Promotional Event

- Christmas in Downtown, **Cuero**
- Love Where You Live, **Temple**

Best Promotion by Digital Campaign

- Public Art Brochure, **Denison**
- Small Business Saturday, **Mesquite**

Best Downtown Business

- That Golden Rule, **Georgetown**

Best Economic Game Changer

- Ecommerce Accelerator Incentive Program, **Denison**

Best Downtown Partner

- Inspired Minds Art Center, **Buda**
- Keep Waco Loud, **Waco**

Resiliency Award

- A Snowball's Chance, **Buda**

Susan H. Campbell Award for Professional Excellence

- Keli Miller, **Goliad** Main Street Manager

The Texas Downtown Association also awarded a total of \$21,800 in grants from its Anice Read Fund toward projects in five Texas Main Streets; **Bay City, Goliad, Levelland, Pittsburg, and Plainview.**

TEXAS HISTORICAL COMMISSION

Item 13.2

Texas Historical Commission
Quarterly Meeting
February 1-2, 2022

Consider Approval of the Application Ranking and Funding Recommendations for the FY 2022 Certified Local Government Grants and Allocation of Available FY 2021 Grant Funds

Background:

The THC annually assists local historic preservation programs of Certified Local Governments (CLGs) through the administration of subgrants funded by the Historic Preservation Fund (HPF) allocation of the National Park Service to the agency. The THC must set at least ten percent (10%) of this annual figure aside for distribution to the CLGs. In FY 2021, we received \$167,727 to allocate as subgrants and we anticipate a similar appropriation for FY 2022. These funds are contingent upon a resolution of the federal budget and notification from the National Park Service.

In addition to the regular CLG grant round, one additional call for applications was announced: travel stipends to attend the National Alliance of Preservation Commission's FORUM Conference in Cincinnati, Ohio July 13-17, 2022.

Travel Stipends

In July of 2021, the Commission approved the allocation of \$18,820.75 in FY21 grant funds for the use as travel stipends. Staff notified all Texas CLGs in the fall of 2021 that travel stipends were available to attend FORUM22 taking place in Cincinnati, Ohio July 13-17, 2022. All CLGs in good standing with the program were eligible to apply. Completed applications were due December 1, 2021 and evaluated by program staff. The scoring criteria prioritized applicants that had not received a CLG travel stipend in the past two years. Eight CLGs applied, requesting stipends for 28 attendees made up of staff and commissioners. The ranking and recommended number of attendees and funding is attached. As noted, staff recommends awarding 17 attendees and increasing the allocated amount by approximately \$890 to total \$19,710.

The stipends will allow recipients to receive specific preservation training that will result in a widespread benefit for communities in the state. FORUM is the *only* national conference specifically for preservation commission members and staff. The conference offers an opportunity for commissioners, staff, and other experts from across the country to share information and best practices from preservation's front lines. Travel stipend grants will be implemented on a reimbursement basis with appropriate documentation required after the event and prior to receiving funds. Registration and attendance at FORUM22 is a requirement of the stipend, however formal match requirements are waived.

Regular FY22 Grant Round

Eligible projects include surveys of historic resources, nominations to the National Register of Historic Places, implementation of preservation plans, development of educational programming, and development/restoration projects. Special consideration is given to projects and programs that directly support the goals of the Texas Statewide Preservation Plan and those projects and programs that encourage diversity and inclusion in the preservation community.

TEXAS HISTORICAL COMMISSION

Eight CLGs applied for a regular FY22 CLG Grant and an interdisciplinary committee of THC staff evaluated the grant requests against established criteria, considering previous grant distribution, viability of proposed projects and coordination with statewide preservation goals and objectives. The attachment details the results of this evaluation, as well as recommended funding levels. The City of San Antonio's score and recommended funding is conditioned upon successful completion of their FY20 grant project to survey the Tobin Hill neighborhood.

Additional Information:

Through authority previously granted by the Commission, the Executive Director is permitted to redirect any FY 2022 grant funds from one recipient to another in the event a grant award is fully or partially forfeited, unexpended, or relinquished during the FY 2022 grant period. The purpose of this authority is to ensure that the maximum amounts of funds are utilized by Texas communities rather than being returned unexpended to the federal agency.

Upon acceptance of the ranking and funding recommendations, staff will fund viable projects in the order of the rankings as federal funds become available. Funds may not be available to fund all the recommended projects.

Recommended motion (Committee):

1. Move that the committee send forward to the Commission and recommend acceptance of the ranking as presented and funding recommendations for the Fiscal Year 2022 Certified Local Government grants based on the availability of federal funds. Funds will be committed in the order of commission staff rankings as federal funds become available. Individual recommended funding amounts may be adjusted as necessary to ensure efficient use of the available funds.
2. Move that the committee send forward to the Commission and recommend acceptance of the ranking as presented and funding recommendations for the allocation of available Fiscal Year 2021 funds to travel stipends for FORUM22. Funds will be committed in the order of commission staff rankings as federal funds become available. The Commission waives the match requirement for stipends. Individual recommended funding amounts may be adjusted as necessary to ensure efficient use of the available funds.

Recommended motion (Commission):

1. Move acceptance of the ranking as presented and funding recommendations for the Fiscal Year 2022 Certified Local Government grants based on the availability of federal funds. Funds will be committed in the order of commission staff rankings as federal funds become available. Individual recommended funding amounts may be adjusted as necessary to ensure efficient use of the available funds.
2. Move acceptance of the ranking as presented and funding recommendations for the allocation of available Fiscal Year 2021 funds to travel stipends for FORUM22. Funds will be committed in the order of commission staff rankings as federal funds become available. The Commission waives the match requirement for stipends. Individual recommended funding amounts may be adjusted as necessary to ensure efficient use of the available funds.

TEXAS HISTORICAL COMMISSION

Item 13.2

Texas Historical Commission
Quarterly Meeting
February 1-2, 2022

**Certified Local Government Program
Fiscal Year 2022 CLG Grant Applications**

Grant Applicant	Project Description	Final Score	Grant Request	Recommended Funding	Running Total
San Marcos	Dunbar Neighborhood National Register Nomination	84.25	\$ 15,000	\$ 15,000	\$ 15,000
Fort Worth	City Historic Resources Survey update, phases V-VI	78.13	\$ 47,500	\$ 47,500	\$ 62,500
Historic Denton Inc.	C.I.A. (College of Industrial Arts) Residential Historic Resources Survey	76.88	\$ 7,500	\$ 7,500	\$ 70,000
Socorro	Rio Vista Farm Rehabilitation Drawings for Building Groups A & C	76.50	\$ 30,000	\$ 30,000	\$ 100,000
Comal County	National Register Nominations for Frueholz House and Frueholz Medical Building	73.38	\$ 6,750	\$ 6,750	\$ 106,750
San Antonio	Construction Documents for Reuse Center at the Bungalow Colony	73.13	\$ 25,000	\$ 25,000	\$ 131,750
Tarrant County	GIS Mapping Project of Previous Survey Data and Context Statements for Unincorporated Areas	70.63	\$ 39,500	\$ 36,000	\$ 167,750
<i>Corpus Christi</i>	<i>Northern Westside Historic Resources Survey</i>	<i>70.50</i>	<i>\$ 15,000</i>	<i>\$ 15,000</i>	<i>\$ 182,750</i>
Totals			\$ 186,250	\$ 182,750	

Should additional funds become available for grants, additional awards up to the maximum grant requests will be made in descending order of scores, beginning with the Tarrant County proposal.

**NAPC FORUM22 Travel Stipends
(Utilizing available FY 2021 funds)**

Grant Applicant	Final Score	Requested Attendees	Requested Funding	Recommended Attendees	Recommended Funding	Running Total
Plano	15.5	4	\$ 4,800	4	\$ 4,800	\$ 4,800
Paris	14.5	4	\$ 3,983	4	\$ 3,983	\$ 8,783
Galveston	13	1	\$ 1,200	1	\$ 1,200	\$ 9,983
Houston	13	4	\$ 4,800	4	\$ 4,800	\$ 14,783
Tyler	9.5	2	\$ 2,400	2	\$ 2,400	\$ 17,183
Seguin	9.5	1	\$ 1,327	1	\$ 1,327	\$ 18,510
San Antonio	9	11	\$ 13,200	1	\$ 1,200	\$ 19,710
<i>Rio Grande City</i>	<i>8.5</i>	<i>1</i>	<i>\$ 1,200</i>	<i>0</i>	<i>\$0.00</i>	<i>\$ 19,710</i>
Totals		28	\$ 32,910	17	\$ 19,710	

TEXAS HISTORICAL COMMISSION

Item 13.3

Texas Historical Commission
Quarterly Meeting
February 1-2, 2022

Consider authorization for Friends of the Texas Historical Commission to license DowntownTX.org and associated intellectual property as a pilot to a single organization with similar mission

Background:

Since 2015, THC staff with the help of the Friends, has been developing the DowntownTX.org web-based tools and software utilizing a combination of private, state, and federal funding that totals more than \$270,000 of capital investment, plus staff time conservatively estimated at \$294,000 to date. The site launched in 2017 and currently there is inventory data for 104 Texas communities with about 20,000 total properties. The system is live to the public for 64 historic downtowns and growing. The site has attracted the attention of several Main Street programs outside of Texas including, West Virginia, Oakland County Michigan, and now the state of Georgia. Since inception, staff has envisioned the possibility of sharing the tools with like-minded preservation organizations whose constituents and historic resources could benefit without having to duplicate the Texas investment. This vision has been part of the project design and shared with the Commission since October 2015. Future licensing fees could reduce some of the annual and future development costs that THC bears maintaining and improving the system. Licensing would also demonstrate the Texas Historical Commission's national leadership role. *(Please refer to backup materials in the packet for further details.)*

Current Situation:

The staff has continued to follow the steps and approach of the pilot project outlined in a May 2019 briefing of the Community Heritage Development Committee. The Georgia Department of Community Affairs and its large Main Street Program has replaced West Virginia as the leading contender to modify and license the software. The anticipated costs that Georgia, or another pilot licensee will need to cover are approximately \$72,000 which also adapts the underlying code to facilitate the option of future licensing to other entities at a lower upfront cost.

At the October 2021 meetings, the CHD Committee recommended authorization of Friends to license DowntownTX.org to organizations of similar mission. Subsequent full Commission discussion yielded questions about licensing details and some concern about the licensing concept generally. The Commission tabled the motion and postponed further discussion. Follow up with Georgia after the meeting determined that they remain interested in licensing the tools with funding still available.

The suggested motion has been modified to limit the licensing authorization to a single pilot organization of similar mission, contemplated currently as the Georgia Department of Community Affairs. The website, software tools, code, data, and other intellectual property belongs to the Commission. The Commission would retain ownership of the property. Friends will apply their typical administrative fees, but otherwise the licensing profits, if any, will be retained to support the future software development and maintenance.

TEXAS HISTORICAL COMMISSION

Recommended motion (Committee):

Move that the committee send forward to the Commission and recommend authorization for Friends of the Texas Historical Commission to license DowntownTX.org and associated intellectual property as a pilot to a single organization with similar mission, with all terms and conditions to be approved by the Friends Board of Trustees.

Recommended motion (Commission):

Move to authorize Friends of the Texas Historical Commission to license DowntownTX.org and associated intellectual property as a pilot to a single organization with similar mission, with all terms and conditions to be approved by the Friends Board of Trustees.

Items below in bold represent actions or briefings of the Commission or committee(s). Additional written briefs on the status and constituent use of www.downtownTX.org were provided in most quarterly meeting packets since the site launch in 2017.

Jan 2015 — Commission formally approves the program analysis for the Courthouse Square Initiative (later renamed Town Square Initiative) within the Texas Main Street Program which includes specific description of the centralized real estate database and downtown online inventory that would eventually become DowntownTX.org

March 2015 — Staff workshops with CRE Planning & Development to outline and scope the “Downtown Online Inventory” software and development needs and requirements.

August 2015 — Ongoing discussions with the Still Water Foundation result in a funding proposal for the Downtown Online Inventory, with an invitation to formally submit.

Oct. 2015—Commission formally approves the reallocation of federal, CLG grant funds returned by recipient towards the Downtown Online Inventory project via the Friends of the THC. Commission packet includes extensive description of the project, that also identified the potential nationwide demand and potential for licensing the tool.

Nov. 2015—Pilot CLG cities selected for project development: Alpine, Palestine, San Angelo, San Antonio. Still Water Foundation formally approves the proposal funding to be combined with the CLG funding.

Jan./Feb. 2016— CRE Planning & Development is selected by the Friends to be the software developer through a competitive RFP process.

Feb. 2016 — Official rollout of the Town Square Initiative to the Texas Main Street network as well as the Downtown Online Inventory. Progress report and work examples provided to then THC Chair Matt Kreisle.

March 2016—Contract executed project kickoff with CRE Planning & Development.

Sept. 2016—Pilot cities begin testing website

Oct. 2016 — THC History/Heritage Development Committee receives a demonstration of DowntownTX.org

Dec. 2016 — Still Water Foundation awards additional funding for Phase 2 of the Downtown Online Inventory that included consideration of branding, legalities, long-term financial stability and monetization of the tool.

Jan. 2017— Annual maintenance contract(s) begin with CRE

May 2017—DowntownTX.org public site launches

Nov. 2017—Staff meeting with CRE to begin scoping Phase 3 work, prior to funding availability. Friends initiate an RFP process for branding and marketing assistance for DowntownTX.org

Mar. 2018—D'TTX site presented at the National Main Street conference

April 2018—Final Still Water Foundation grant report for Phase 1 & 2 work

June 2018— Logo designs reviewed with Communications staff

Jan. 2019—Commission formally approves CLG Grant to Friends on behalf of two CLG communities to participate in the development of Phase 3 of DowntownTX.org development and enhancements. CHD Committee is informed of the interest from West Virginia and Wayne County, Michigan in the licensing of DowntownTX.org.

Feb. 2019—Pro-bono conversation with Cronin, PLLC to identify needs and questions concerning wordmark and other legal protections.

Mar. 2019—THC receives substantial interest from West Virginia to license software; staff begins conversations with CRE concerning the coding work required for potential licensing

May 2019—THC CHD Committee is briefed extensively on the plan for a licensing pilot effort for DowntownTX.org, at the time contemplated with West Virginia. The briefing included an accounting of investments to date, licensing interest expressed by multiple entities, roles and responsibilities, and potential fee structure for pilot and future licensees. Through discussion, the committee supported the pilot expansion and approved staff's approach including five specific steps:

- 1. Formally partner with Friends of the THC for expansion**
- 2. FTTHC to contract for multi-tenant features with fees to cover legal and administration costs**
- 3. Work on legal and business issues while software is being modified**
- 4. Evaluate the success of the pilot and business plan**
- 5. Seek Commission and Trustee approval for future expansion, or terminate the expansion leaving THC and licensee as the only users of the product, at no risk to THC**

June – Dec. 2019—Staff vacancy, project on hold

Feb. 2020—Pro-bono legal conversations resume with Cronin PLLC

Mar. 2020—Office of Attorney General (OAG) defers the hiring of outside counsel decision to Friends

Jun. 2020—Friends of the THC engage Cronin PLLC for a Terms of Use document and exploration of website and wordmark protections

July. 2020—Federal grant extension amendment secured due to COVID-19 impacting project schedule; Cronin PLLC reports that trademark search is relatively clear and advises that THC proceed with wordmark application

Oct. 2020— THC CHD Committee briefed on the progress of the legal work and word marking for **DowntownTX.org**. Terms of Agreement approved by the OAG; published to the website. It is determined that THC will need to formally apply for the wordmark and thus OAG approval for outside counsel is required and application for approval is initiated.

Jan. 2021— Phase 3 pilot city testing begins; OAG approval received for a limited engagement with Cronin, PLLC to file a wordmark application with the US Patent and Trademark Office (USPTO); staff hosts requested informational webinar with Georgia Main Street about DowntownTX.org software

Apr. 2021—Georgia expresses tangible interest in licensing software, with funding available

Jun. 2021—Completion of pilot testing; begin preparing site for rollout to production

July 2021—THC CHD Committee briefed substantially on the status of the pilot licensing project including a recap of the committee’s recommendations from May 2019.

Aug. 2021—Phase 3 work completed and uploaded to the live production site; USPTO responds to application with an office action, THC seeking OAG approval to renew Cronin limited engagement contract prior to the period necessary to respond to the USPTO (both wordmark application and OAG approval renewal for outside counsel is pending).

Sept. 2021—Phase 3 CLG grant closed out; MVP licensing software scope, cost, and schedule estimated with CRE as preferred vendors.

Oct. 2021— THC CHD Committee recommends authorization of Friends to license **DowntownTX.org** to organizations of similar mission. Full Commission discussion yields questions about licensing details and some members express concern about the licensing concept generally. The Commission tables the motion and postpones further discussion. In advance of quarterly meeting, staff host multiple presentations concerning licensing software with Georgia. Follow up with Georgia after the Commission action determines that they remain interested in licensing the tools and the funding at the levels outlined remains available.

The THC owns DowntownTX.org a web-based downtown management tools and real estate software that launched in 2017 and currently holds data for 104 Texas communities with more than 20,500 total properties inventoried. The system is live to the public for 64 historic downtowns and growing. These communities use the tools to manage their historic downtown district, promote buildings available for sale or lease, and connect the public, business owners, and agents with local and state incentives for investment in historic downtown building.

The site has attracted the attention of several Main Street programs outside of Texas including, West Virginia, Oakland County Michigan, and now the state of Georgia. Since inception, staff has envisioned the possibility of sharing the tools with like-minded preservation organizations whose constituents and historic resources could benefit without having to duplicate the Texas investment. This vision has been an optional part of the project design since October 2015. Future licensing fees could reduce some of the annual and future development costs that THC bears maintaining and improving the system. Licensing would also demonstrate the Texas Historical Commission’s national leadership role.

With Office of the Attorney General (OAG) approval and utilizing private funds, THC staff and the Friends of the Texas Historical Commission (Friends) have undertaken consultation with intellectual property attorneys, FBFK (formerly with Cronin PLLC). Topics of consultation have included wordmark protection which is in progress with approval anticipated; software copyrights; a Terms of Use Agreement; and licensing concepts.

The financial investment in the entire project, not licensing specific, since 2015 has been:

THC funds (primarily annual maintenance funds)	\$121,410
THC staff time (conservative estimate)	\$294,000
Private funds (Still Water Foundation via Friends)	\$75,000
Federal funds (CLG Grants via THC and Friends)	\$78,000
TOTAL	\$568,410

Regardless of licensing, the ongoing annual costs for server hosting, code maintenance, and technical support provided by CRE, the software development team is \$19,600. The overall project is currently managed by one staff member, accounting for about 75 percent of their time, and supplemented by assistance from one support staff member. The current estimate of staff time toward the project is \$47,500 annually, though this figure fluctuates based on project requirements. Without licensing revenue, new development and enhancement of the software features will only proceed when adequate funding is available in the division’s operating budget which is projected to be infrequent, or of limited scope.

(continued)

Goals of the Licensing Proposal:

1. Support the long-term viability of the software, potentially generating enough funds to make the application self-sustainable and provide revenue for future development and feature enhancements, thereby reducing the burden on THC; and
2. Provide a national leadership role for THC by providing access to the unique tool to historic preservation programs with missions compatible with that of the THC.

Need for the Licensing Proposal:

The existing DowntownTX.org site and tools can continue to be utilized by THC and its constituents without a pilot or future licensing effort. However, the annual costs will remain the full responsibility of THC, future software enhancement will be limited by program funding, THC will cede a leadership role, and the intellectual property will not benefit from outside perspectives and experiences.

To pursue the option and viability of licensing, a pilot project with its associated funding is necessary:

- To provide the funds to rebuild the existing system architecture required for multi-tenant capacity;
- To generate the legal contract templates required to license, using pilot program's fees;
- To act as a case study for future licensees beyond the partnering pilot program, enabling staff to better approximate the value of services for the business model.

Steps of the Pilot Licensing Proposal:

The staff has continued to follow the steps and approach of the pilot project as outlined in a May 2019 briefing of the Community Heritage Development Committee. The following proposed steps conform to the approach which was received positively by the committee:

- 1. Seek Commission approval for FTHC to license the THC-owned code to a single like-minded organization as a pilot, to the benefit of the Commission.**
- 2. FTHC to negotiate an interim agreement with the pilot entity including payment to FTHC, the estimated \$14,000 in legal fees necessary for the drafting of the specific licensing agreement necessary for the pilot and the template for future licensing, if any.** An agreement or modifications of existing agreements between the FTHC and CRE, the software developers, will also be included. The fees would also cover the drafting of an agreement between the FTHC and THC specific to DowntownTX.org should that be desirable or required. *(The \$14,000 fee includes a \$3,000 administrative fee for the pilot project.)*
- 3. FTHC to execute licensing agreement with pilot organization, triggering a \$58,000 payment to FTHC to be used by FTHC to contract with CRE for the rebuild of software base code for multi-tenancy capacity, and build costs for set-up, customization, training, maintenance, and support of the pilot organization.** The scope of the software work will be detailed by reference or attachment to the licensing agreement. Any expansion of customization or features beyond the approved scope will be billed to the pilot organization and subject to FTHC/THC approvals. All software revisions will remain the property of the THC.
- 4. CRE to implement the software changes to facilitate licensing and any customization for the pilot organization.** FTHC and THC staff will retain oversight for the work in collaboration with the pilot organization.

5. **THC staff will train the pilot organization's project manager on the uploading of their data and the use of the site. Upon launch of the pilot organization's site, CRE will begin the annual maintenance and technical support for the pilot organization.** The pilot organization will be responsible for the input and management of their data along with training and support of their participating communities. The pilot organization will own its data but THC will retain ownership of the software code and any improvements.
6. **After adequate time has passed since the pilot organization's launch, FTHC and THC will complete the evaluation of the pilot project and feasibility analysis for additional licensing.** Consideration of other business models such as outsourcing licensing and administration to make the product more scalable should be part of this evaluation. If licensing is recommended, a fee schedule will be finalized. *(preliminary estimates set the entry costs for future licensees at \$16,000 for initial year-one setup; a licensing fee of \$10,000/year; plus annual maintenance/support fees)*
7. **THC will report to the Commission on the evaluation, feasibility, and fee schedule and seek approval for future licensing or to cease licensing efforts beyond the terms of the agreement with the pilot organization.**

As proposed, the pilot project will enable the Friends to work with CRE to rebuild the existing system architecture with minimal financial or intellectual property risk to the agency, as the THC will maintain all rights for the code and brand while not being an active party in the contracts. The total pilot organization fee of \$72,000 is designed to cover the required legal and software costs, limiting THC financial liability. This represents an upfront payment of licensing fees covering a proposed five-year period. Beginning with the second year of this five-year period, the pilot organization will begin paying Friends or CRE directly, an annual maintenance and support fee of \$15,000 for services provided by CRE. At this time, it is anticipated that the THC's annual maintenance and support fee will be reduced from \$19,600 to \$15,000. Future licensing, if any, may further reduce or eliminate this THC cost.

Should the THC forego the pilot or future licensing, that would not jeopardize the existing project. However, without first licensing to a pilot organization in exchange for their funding, neither THC nor the Friends are prepared to assume the financial costs necessary to modify the software. Without the software modifications, future licensing is not technically feasible.

Roles and Responsibilities:

Texas Historical Commission

Texas Historical Commission is the owner of the software code and intellectual property. THC staff manage the site and tools and scopes future improvements. THC staff assist the Texas communities with collecting and integrating their data; manage the security privileges of users; and provide the initial training and guidance for Texas communities. Currently the agency funds the annual hosting and maintenance out of the Development Assistance budget and provides the project manager. The Texas Historical Commission also awarded federal grant funds to the Friends on behalf of Certified Local Governments to improve the tools; funds that cannot be used by THC directly. Beyond initial orientation and training with project manager(s), the THC will not be responsible for the pilot organization's data or interactions with their users.

Friends of the Texas Historical Commission

The FTHC has partnered to support the website's development since inception and was the recipient of the initial seed funding from a private foundation as well as subsequent public and private grants. The unique relationship between the agency and nonprofit Friends was and remains critical to the ability to develop and improve the tool. FTHC involvement in the project is covered by the existing MOU with THC.

With THC approval for pilot or future licensing, the Friends will be primarily responsible for DowntownTX licensing, contract management and funds, holding all generated revenue in trust to support the THC's goals and future software improvements.

CRE Planning and Development

CRE Planning and Development is the software development team contracted by the Friends to design and write the software code. They also provide the hosting, technical support, and maintenance of the site under annual contracts with THC. CRE provides THC with periodic software backups and copies of the code. CRE would be the preferred software developer for future licensees, if any. They will provide the hosting, technical support, and maintenance for any future licensees with an anticipated economy of scale that would reduce or eventually eliminate THC annual maintenance costs. The involvement of CRE is subject to future changes.

FBFK (Ferguson Braswell Fraser Kubasta PC)

FTHC has engaged Cronin PLLC which is now part of FBFK as legal counsel for intellectual property issues related to DowntownTX.org. To date FBFK has developed a Website Terms of Use for the current site, approved by the Office of the Attorney General. FBFK has also filed a wordmark application regarding DowntownTX on behalf of the THC. OAG has granted THC permission for outside counsel on this specific issue. In all other regards, FBFK is acting as counsel to FTHC not THC.

Office of the Attorney General

The OAG is the exclusive legal counsel for the THC and does not represent FTHC. THC may not engage outside counsel without the express, formal approval of the OAG, as was given for the wordmark application. The OAG has previously expressed that they are not experienced with intellectual property as a specialty. They will review any agreements drafted by others that materially or contractually impact the agency.

Georgia Department of Community Affairs

The anticipated pilot organization at this time. The Georgia Main Street Program began in 1980 and is within the department, serving 105 Georgia cities through the program. Georgia would be responsible for their state's data, the training of their participants, and the users of their site for the term of any license. The department has funding in hand should the pilot licensing be approved in a timely manner. They have expressed an ability to establish a proprietary procurement process with the Friends for the license. Conversely it may be infeasible for them to contract directly with the THC.

The following Website Terms of Use and Copyright Information is currently utilized by DowntownTX.org and was drafted by Cronin PLLC (now FBFK PC) for the Friends of the THC and approved by the Office of the Attorney General.

USE OF THE SITE

The DowntownTX.org website (the “Site”) is operated by the Texas Historical Commission and the Friends of the Texas Historical Commission (“we” or “us”). By using the Site, you are agreeing to comply with and be bound by the following terms, which we may change at any time by updating this page. If you do not agree to be bound by these terms, you are not permitted to use the Site.

USER REPRESENTATIONS

By using the Site, you represent and warrant that: (1) you are (a) at least 18 years of age and have the legal capacity to agree to these terms, or (b) you are accessing the Site under the supervision of a legal guardian who has agreed, on your behalf, to be bound by these terms; (2) you will not access the Site using any “web crawler” or other automated or non-human means, such as a bot or script; and (3) you will not upload or transmit to the Site any content or information that (i) infringes an intellectual property right belonging to us or to any third party, including copyright, trade secret, or right of privacy or publicity; (ii) is offensive, obscene, threatening, libelous, defamatory, harassing, or that otherwise may give rise to civil or criminal liability; or (iii) includes personal or nonpublic information about a third party without their consent. If you violate any of these terms, we may suspend or terminate your access to all or any portion of the Site.

INTELLECTUAL PROPERTY

All of the text, images, marks, logo marks, art work, and other contents of the Site, collectively “Site Content”, including but not limited to the design, expression, “look and feel” and arrangement of such Site Content, are property of the Texas Historical Commission and third party contributors authorized by Texas Historical Commission. Such materials may be protected by trade dress, copyright, trademark laws, and various other intellectual property rights and unfair competition laws.

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WEBSITE ANALYTICS

We may engage third-party service provider vendors, such as Cloudflare, Google Analytics,

Facebook Pixel, or other service providers to provide us with information regarding usage of the Site. In doing so, we may allow the use of first party cookies, third- party cookies, and other forms of data collection (collectively, tracking technologies), where allowed by law, to gather and analyze information regarding usage of the Site. By accessing the Site, you consent to the use of such tracking technologies to the extent they relate to your usage of the site.

USE BY MINORS

The Site is not directed to, or intended for use by children, and we do not knowingly solicit information from or market to children. If you become aware of any data we have collected from children, please contact us using the contact information provided below so that we may delete it.

THIRD-PARTY WEBSITES

The Site may include links to websites operated by third parties ("Third-Party Websites"). The Texas Historical Commission and the Friends of the Texas Historical Commission do not endorse and are not responsible for any Third Party Websites accessed through the Site or any content posted on such sites. Your use of Third Party Websites will be subject to the terms of use, if any, provided by the operator of such Third Party Website.

DISCLAIMER

The Texas Historical Commission and Friends of the Texas Historical Commission make no claims, promises, or guarantees about the accuracy, completeness, or adequacy of the contents of the Site and expressly disclaim liability for errors and omissions in the contents of the Site. No warranty of any kind, including but not limited to the warranties of non-infringement of third party rights, title, merchantability, fitness for a particular purpose, and freedom from computer virus, is given with respect to the contents of this web site.

The Texas Historical Commission and Friends of the Texas Historical Commission shall not be liable, regardless of the cause or duration, for any errors, inaccuracies, omissions, or other defects, or untimeliness of information contained within the Site, or for any delay or interruption in the transmission thereof, or for any claim or loss arising therefrom or occasioned thereby. The Texas Historical Commission and Friends of the Texas Historical Commission shall not be liable for any damages, of any type or nature whatsoever, occasioned by the actions or omission of actions, if any, taken in reliance upon any information contained within this site.

GOVERNING LAW

All matters relating to your access to this site, including all disputes, will be governed by the laws of the United States and by the laws of the State of Texas, without regard to its conflicts of laws provisions. You agree to the personal jurisdiction by and venue in the state and federal courts in Austin, Texas in the event of any dispute relating to your use of the Site, and waive any objection to such jurisdiction or venue.

DIGITAL MILLENNIUM COPYRIGHT ACT

If you believe that any content posted on the Site infringes your copyrights, you may

request that the Texas Historical Commission remove such content by submitting a notification pursuant to the Digital Millennium Copyright Act (the “DMCA”) using the contact information provided below. Your notification should include the following information:

1. Identification of the copyrighted work you believe to be infringed. Please describe the work and include a copy of the work you believe to be infringed. If possible, please include a copyright registration number associated with the work and a depiction or link to an authorized version or copy of the work.
2. Identification of the content that you believe is infringing. Please include a link to or picture of the portion of the Site that includes the purportedly infringing content in sufficient detail for the Texas Historical Commission to be able to locate the Content.
3. Your contact information, including name, email address, telephone number, and mailing address.
4. A statement that you have a good faith belief that the content is not authorized by the copyright owner, its agent or the law.
5. A statement made “under penalty of perjury” that (i) you are the copyright owner or are authorized to act on behalf of the copyright owner, and (ii) that the information you are supplying is accurate.
6. Your physical or electronic signature (or the physical or electronic signature of the copyright holder or authorized representative).

CONTACT US

In order to resolve a complaint regarding the Site or to receive further information regarding use of the Site, please contact us at:

Texas Historical Commission

Phone: 512.463.6100

Email: thc@thc.texas.gov

Mailing Address

P.O. Box 12276

Austin, TX 78711