

A U S T I N C I T Y C O U N C I L
AGENDA

Thursday, July 27, 2006

[Back](#) [Print](#)**Public Works
RECOMMENDATION FOR COUNCIL ACTION****ITEM No. 44**

Subject: Approve a resolution authorizing the execution of an Endorsement Agreement between Lance Armstrong and the City of Austin regarding the Lance Armstrong Bikeway.

**Additional Backup
Material**

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For More Information: Louis Lindsey 974-7099, Laura Bohl 974-7064.

Prior Council Action: May 25, 2006, by Resolution No. 20060525-051

This Endorsement Agreement addresses the use of Lance Armstrong's name and clarifies the City's and Armstrong's representations and liabilities.

The Lance Armstrong Bikeway is a six-mile bikeway that will be constructed to provide bicycle connections in an east/west direction through Downtown Austin. From the Montopolis Bridge on the east, the bikeway will traverse 5th Street, 4th Street, 3rd Street, Cesar Chavez, Stephen F. Austin Drive and Veterans Drive to the west end at Lake Austin Boulevard. There will be connections to numerous north/south bike routes through the city and to destinations such as the Roy Guerrero Colorado River Park, Saltillo Plaza, the Convention Center, Downtown, the Seaholm Power Plant and the Town Lake Hike and Bike Trail. The bikeway will consist of a combination of off-street concrete trails, on-street striped bike lanes, and on-street signed bike routes. Construction of the bikeway is expected to begin in early 2007 with completion scheduled for 2008.

ENDORSEMENT AGREEMENT
BY AND BETWEEN
LANCE ARMSTRONG,
THE CITY OF AUSTIN, TEXAS,

This Endorsement Agreement (the "Agreement") is made and entered into this _____ day of _____ 2005, (the "Effective Date") by and between Lance Armstrong ("Armstrong") and the City of Austin, Texas, (the "City").

For and in consideration of the mutual covenants, rights, and obligations set forth in this Agreement, the City and Armstrong agree as follows:

1. Definitions. In this Agreement, the following words or phrases have the following meanings:

(a) "Armstrong's Endorsement" means Armstrong's name or part thereof, image, likeness, voice, live or recorded performance, photograph, signature (or facsimile thereof), and all trademarks containing Armstrong's name, likeness, signature including any logo or script used in connection therewith.

(b) "The Bikeway" means the proposed Lance Armstrong Bikeway, which the City will construct, operate and maintain in or around Austin, Texas. The Bikeway will be a free bicycle trail constructed for the use and enjoyment of the citizens and visitors of Austin, Texas.

2. Term. The term of this Agreement (the "Term") is that period of time commencing on the Effective Date and continuing from year to year until terminated. Either party may terminate this Agreement by giving the other party 30 days written notice. When this Agreement is terminated for any reason, all of the City's rights to use Armstrong's Endorsement cease absolutely and immediately, and, from the moment of termination, the City may not use or refer to Armstrong's Endorsement in promotion. Notwithstanding the preceding sentence, from the effective date of termination, the City will have 3 months to change the signage on the Bikeway and to change any promotional items referring to the Bikeway.

3. Armstrong's Grant of Endorsement Rights. Armstrong grants to the City the right and license to use Armstrong's Endorsement without any fee or payment being required during the Agreement's Term in connection with the City's promotion of the Bikeway to support this municipal purpose. The City may not use Armstrong's Endorsement in connection with any services or products other than as specified in this Agreement. The City is not entitled to create, reproduce, publish, sell, distribute, transmit, download, or otherwise use any electronic media containing Armstrong's Endorsement, or to license any publication to do any of the foregoing, except solely for promotional purposes and not, in any case, for sale or resale or distribution in any manner. The City will ensure that all uses of Armstrong's Endorsement comply with applicable laws.

4. City Services. The City will publicize Armstrong's image and various achievements in a positive manner designed to engender goodwill. The City will broadcast the positive qualities of bicycling in particular and outdoor recreation/exercise in general to the people of Austin. The City will ensure that the Bikeway is constructed and maintained with the same high quality normally associated with Armstrong's Endorsement.

5. Approval of Armstrong's Endorsement. The City will not use Armstrong's Endorsement until Armstrong has approved that use. Any material the City submits to Armstrong for approval is deemed to be approved if Armstrong has not disapproved in writing the material within 20 business days after he receives a request for approval. Once Armstrong approves use of materials incorporating Armstrong's Endorsement, the City may make multiple uses of approved materials and any and all images, likenesses, and photographs contained therein in the same or a substantially similar media without seeking Armstrong's further approval.

6. Trademarks. The City will not file, during or after the Term, any application for trademark registration or otherwise obtain or attempt to obtain ownership of any trademark or trade name which consists of Armstrong's Endorsement. If prior to the Effective Date, the City has filed one or more applications for registration of any such trademark, or otherwise has obtained any rights to such trademark, the City will assign such applications and trademarks to Armstrong. Armstrong retains all trademarks in and to Armstrong's Endorsement. Armstrong retains the ownership rights in his name and all good will generated in his name inures to Armstrong.

7. No Pass Through Rights. Other than to the City itself, this Agreement grants no rights, including the right to Armstrong's Endorsement, to any person or entity. The City may not pass through or assign the rights it receives under this Agreement.

8. The City's Representations. The City represents to Armstrong the following:

(a) The City has all requisite right, power, and authority to enter into, execute, deliver and perform this Agreement, and any other documents and instruments required to be executed and delivered pursuant to this Agreement.

(b) Neither the City's execution of this Agreement nor the consummation of the transactions contemplated in this Agreement will (i) violate any provision of the City's certificate of incorporation, bylaws, or other charter documents; (ii) violate any agreement to which the City is a party; (iii) require any authorization, consent or approval of, exemption, or other action by, or notice to, any party, or (iv) violate any law or order to which the City is subject.

(c) On the date of execution of this Agreement, there is no claim, litigation, investigation, arbitration, or other proceeding against the City, outstanding or asserted in

writing, or otherwise known to the City that in any way, directly or indirectly, affects the City's ability to perform its obligations under this Agreement.

9. Armstrong's Representations and Warranties. Armstrong represents to the City the following:

- (a) He has the right to enter into this Agreement;
- (b) Neither Armstrong's execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will (i) violate any agreement to which Armstrong is a party; (ii) require any authorization, consent or approval of, exemption, or other action by, or notice to, any third party, or (iii) violate any law or order to which Armstrong is subject.
- (c) Assuming the City obtains permission in accordance with Section 5 of this Agreement, no use of Armstrong's Endorsement approved by Armstrong will violate or infringe upon any third party's rights.

10. Liability. The City agrees that it is solely responsible for its proportionate share of any liability arising out of or connected in any way to the negligent design, construction, operation and maintenance of the Bikeway, including personal injury or death to any person or damage to any property, as determined by a court of competent jurisdiction, to the exclusion of any such liability on the part of Armstrong. The parties acknowledge that Armstrong's only participation in the Bikeway is the granting of a license to use Armstrong's Endorsement. Armstrong is not and will not be involved in the design, construction, operation, or maintenance of the Bikeway.

11. Press Releases and Announcements. No party may issue any press release or announcement relating to the subject matter of this Agreement without the other party's approval.

12. Notices and Submissions. All notices hereunder are effective upon receipt if hand delivered or sent by overnight courier, by facsimile or by certified mail, return receipt requested to the following addresses:

Lance Armstrong
c/o Capital Sports & Entertainment, Inc.
98 San Jacinto
Suite 430
Austin, Texas 78701
Attn: William J. Stapleton

The City of Austin, Texas
Public Works Department
P.O. Box 1088
Austin Texas 78767

Attn: Louis Lindsey, Project Manager (or successor)

Either party may change his or its address for notice and payment by giving written notice to the other party in accordance with this section.

13. Assignment. Only the City may use the rights Armstrong grants it in this Agreement. Neither party may assign its rights or powers under this Agreement without the express written consent of the other. Any attempt to assign without the other party's consent will be null and void.

14. Reservation of Rights. All rights that Armstrong does not specifically grant to the City remain the property of Armstrong to be used in any manner he deems appropriate. During the Term, Armstrong may authorize others to use Armstrong's Endorsement in connection with any and all items and services, and the City's rights under this Agreement are non-exclusive.

15. No Joint Venture. This Agreement does not constitute and may not be construed as constituting a partnership or joint venture between the City and Armstrong. Neither party may obligate or bind the other party in any manner whatsoever and nothing in this Agreement gives any rights to any third person. Nothing in this Agreement is to be considered to create an employer-employee relationship between the parties. At all times, the City and Armstrong are independent contractors.

16. Survival. Those provisions of this Agreement that by their nature extend beyond termination or expiration of this Agreement will survive such termination or expiration.

17. Waiver. No waiver of a breach of any provision of this Agreement is effective unless approved in writing by the waiving party. If a party at any time fails to demand strict performance by the other of any of the terms, covenants, or conditions set forth in this Agreement, that waiver does not constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provision of this Agreement.

18. Other Instruments. The parties will execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the rights, responsibilities, and obligations created by this Agreement.

19. Significance of Headings. Section headings contained in this Agreement are solely for the purpose of aiding in speedy location of subject matter and are not to be given any weight in construing this Agreement.

20. Governing Law and Venue. This Agreement is to be governed and construed according to the laws of the State of Texas without regard to conflicts of law. The proper exclusive venue for resolution of any dispute related to this Agreement is only in Austin, Texas.

21. Entire Agreement. This Agreement contains the entire agreement between the parties relative to the subject matter and supersedes any other prior understandings, written or oral, between the parties with respect to this subject matter. No variations, modifications, or changes in the Agreement are binding on any party to the Agreement unless set forth in a document duly executed by or on behalf of such parties.

22. Section References. When this Agreement makes reference to an article, section, paragraph, clause, schedule or exhibit, that reference is to an article, section, paragraph, clause, schedule or exhibit of this Agreement unless the context clearly indicates otherwise. Whenever the words "include," "includes," or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation."

23. Severability. If a mediator, arbitrator, or court holds, for any reason, that one or more provisions of this Agreement is invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, but such provision will be deemed deleted, and the deletion will not affect the validity of other provisions of this Agreement.

24. Counterparts. The parties may execute this Agreement in any number of counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument. This agreement may be executed by facsimile signature.

25. Construction. All parties have been advised to seek their own independent counsel concerning the interpretation and legal effect of this Agreement and have either obtained such counsel or have intentionally refrained from doing so and have knowingly and voluntarily waived such right. Consequently, the normal rule of construction to the effect that any drafting ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendment or exhibits.

By their signatures or their representative's signature, the parties agree to and accept this Agreement:

LANCE ARMSTRONG

Date: _____, 2005

CITY OF AUSTIN

By: _____ x

Name: _____ x

Title: _____ x

Date: _____, 2005

Approved as to form:

Assistant City Attorney

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Council approves the execution of an Endorsement Agreement between Lance Armstrong and the City of Austin regarding the Lance Armstrong Bikeway.

ADOPTED: _____, 2006 **ATTEST:** _____
Shirley A. Gentry
City Clerk

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