

AN ORDINANCE 2006-06-29-0777

AUTHORIZING A FIVE-YEAR AGRICULTURAL LEASE WITH MR. WESLEY ATKISON FOR THE IN-KIND CONSIDERATION OF HIS MOWING AND MAINTAINING APPROXIMATELY 273 ACRES OF CITY-OWNED LAND AT SOUTHWEST BUSINESS & TECHNOLOGY PARK IN DISTRICT 6, AND AUTHORIZING THE RENEWAL OF THIS AGREEMENT FOR SOME OR ALL OF THE AFFECTED CITY PROPERTY AT THE PARK WITHOUT FURTHER COUNCIL ACTION.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is hereby authorized and directed to execute and deliver on behalf of the City a lease agreement in substantially the form attached as **Attachment I**, which is incorporated herein by reference for all purposes as if it were fully set forth. The City Manager and her designee should take all other actions reasonably necessary or convenient to effectuate the transaction described in Attachment I, including agreeing to non-material changes to its terms.

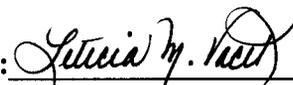
SECTION 2. The Director of Asset Management may renew this lease for some or all the affected property without further council action if the City rights are not diminished and its obligations are not enlarged.

SECTION 3. This Ordinance becomes effective July 9, 2006.

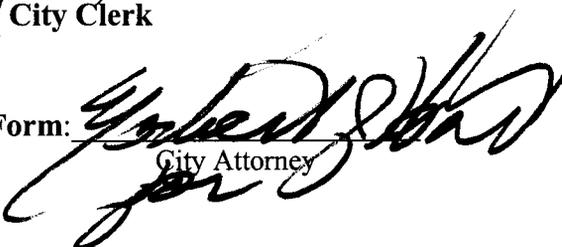
PASSED AND APPROVED this 29th day of June 2006.


M A Y O R

PHIL HARDBERGER

Attest: 

City Clerk

Approved As To Form: 

City Attorney

Attachment I

Agricultural Lease

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Tenant: Weslet Atkison

Tenant's Address: P.O. Box 656, Comfort, Texas 78013

Permitted Use: Planting, growing, tending, and harvesting hay, grain, and similar crops

Lease Commencement Date: June 1, 2006

Lease Expiration Date: May 31, 2011

Excluded Improvements: Any structure, improvement, or equipment situated on the Premises and constructed or installed by any person other than Tenant.

Premises: 273 acres, more or less, situated at the Southwest Business and Technology Park, San Antonio, Bexar County, Texas, as graphically depicted on **Exhibit A**, the Premises being approximately the same property Landlord has previously leased to Tenant for the same or similar purposes, less property previously sold by Landlord.

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1. Lease.

1.01. Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord, both under the terms and conditions of this agreement.

1.02. This lease may be renewed only on the mutual agreement of the parties. Landlord may be bound to a renewal by the agreement of the Director of Asset Management, without further council action.

2. Benefit to Landlord.

In lieu of cash rent, Tenant promises to keep the premises clean and neat. Tenant must mow at least monthly all portions of the Premises not under cultivation, unless Landlord agrees in writing that, as to a specific month, mowing is not necessary. Tenant must mow cultivated fields on the same schedule as other portions of the Premises after harvest or after a decision is made not to harvest because of drought or other cause.

3 Tenant’s Affirmative Promises.

Tenant must:

- a. Accept the Premises in their present condition “AS IS”.
- b. Obey all laws, ordinances, orders, rules, and regulations applicable to the use, condition, and occupancy of the Premises, including the rules and regulations of the United States Department of Agriculture and the Texas Agriculture Commissioner.
- c. Timely perform the in-kind services in lieu of cash rent due under this Lease.
- d. Pay for all labor, fuel, and utility services used by Tenant.
- e. Pay all taxes on the crops raised on and Tenant’s property located on the Premises.
- r. Allow Landlord to enter the Premises to inspect the Premises and show the Premises to prospective purchasers or tenants.

- g. Repair, replace, and maintain any part of the Premises used by Tenant.
- h. Repair any damage to the Premises or Excluded Improvements caused by Tenant.
- i. Vacate the Premises on the last day of the Term.
- j. Pay all costs of planting, raising, and harvesting the crops, unless Landlord elects to receive payment in kind, in which case costs will be shared in the same proportion as the crops.
- k. Cultivate the Premises in a timely, thorough, and farmerlike manner, employing the best methods of farming customarily practiced on like crops in the area.
- l. Keep all gates on the Premises closed and locked.
- m. Enter and exit the Premises only at those places designated by Landlord.

4. Tenant's Negative Promises.

Tenant must not:

- a. Use the Premises for any purpose other than the Permitted Use.
- b. Create or allow a nuisance or permit any waste of the Premises.
- c. Change Landlord's lock system.
- d. Alter the Premises, including clearing new roads, moving or erecting any fences, or locating on the Premises any type of manufactured housing or mobile home.
- e. Assign this lease or sublease any portion of the Premises without Landlord's written consent.
- f. Make any new or change any existing agreement with any governmental entity.
- g. Hunt or fish on the Premises or allow anyone else to do so.
- h. Litter or leave trash or debris on the Premises.
- i. Allow a lien to be placed on the Premises.

5. Landlord's Affirmative Promise.

Landlord must lease to Tenant the Premises for the entire Term beginning on the Lease Commencement Date and ending on the Lease Expiration Date, unless this Lease is sooner terminated according to its terms.

6. Landlord's Negative Promise.

Landlord must not allow any use of the Premises inconsistent with the Permitted Use as long as Tenant is not in default.

7. Alterations.

Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

8. Abatement.

Tenant's covenant to perform in-kind services in lieu of cash rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate the in-kind services for any reason.

9. Release.

Tenant Releases Landlord From All Claims Or Liabilities For Any Injury To Tenant Or To Tenant's Property Located On The Premises. **This Release Applies Even If The Damage Or Loss Is Caused In Whole Or In Part By The Negligence Or Strict Liability Of Landlord.**

10. Condemnation.

10.01. If the Premises cannot be used for the Permitted Use because of condemnation or purchase in lieu of condemnation, this lease will terminate.

10.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Tenant need not perform any in-kind services in lieu of cash rent on the portion of the Premises taken.

10.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

11. Landlord's Lien.

11.01. Tenant grants to Landlord a security interest in the collateral to secure payment and performance by Tenant of all obligations and payments due from Tenant under this lease. The collateral will include all of Tenant's crops, livestock, and personal property located or to be located on the Premises, and all products, proceeds, offspring, increase, governmental payments, insurance proceeds, documents of title, and warehouse receipts relating to such property.

11.02. This lease is a security agreement under both article 9 of the Texas Business and Commerce Code and the federal Food Security Act of 1985. Tenant agrees to furnish to Landlord a list of the names and addresses of any buyer, commission merchant, or selling agent to or through whom Tenant may sell the collateral. Tenant agrees to notify Landlord of the identity of any buyer, commission merchant, selling agent, or warehouse to or with whom Tenant intends to sell or store the collateral within seven days before any sale or storage of the collateral.

12. Default.

Defaults by Tenant are (a) failing to pay timely perform in-kind services in lieu of cash rent; (b) abandoning or vacating a substantial portion of the Premises; and (c) failing to comply within 10 days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

13. Remedies for Default.

Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive rent or in-kind services directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (b) enter the Premises and perform Tenant's obligations; and (c) terminate this lease by written notice and sue for damages. Tenant acknowledges that Landlord's damages would include the cost of getting another to mow the Premises. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be farming the Premises, until the default is cured, without being liable for damages.

14. Default/Waiver/Mitigation.

It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by law. Landlord and Tenant have a duty to mitigate damages.

15. Early Termination.

15.01. Landlord may terminate this agreement in whole or in part on 10 days' prior written notice. If Landlord terminates this Lease or any part of it while crops are in the ground and if Tenant has timely delivered to Landlord a "Planting Diagram" as later prescribed, then Landlord will pay Tenant \$200 liquidated damages for each acre removed from the Premises on which Tenant has crops in the ground. To be timely, Tenant must deliver the Planting Diagram not later than December 31 of the year before the termination occurs. For Tenant to be entitled to the liquidated damages, the Planting Diagram must identify specifically what parcels are planted and how many cultivated acres are in each parcel. Tenant has the responsibility to assure the Planting Diagram meets the requirements of this section. Landlord need not review it for adequacy when received. Landlord may file it without review and refer to it only if this Lease is terminated early. The liquidated damages are Tenant's sole remedy for Landlord's early termination.

15.02. Tenant may terminate this agreement in whole or in part without cause on 30-days' prior written notice.

16. Holdover.

If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

17. Limitation of Warranties.

This Lease contains no implied warranties, including but not limited to warranties of merchantability or fitness for any intended purpose. Landlord specifically disclaims any warranty not expressly stated in this Lease.

18. Mineral Interests.

This lease is subordinate to any present or future oil, gas, or other mineral exploration agreements and leases relating to the Premises. Landlord will not be liable to Tenant for any damages for actions attributable to those agreements and will receive all consideration paid therefor.

19. Landlord's Use.

Landlord retains the right to enter on and use and/or permit third parties to enter on and use the Premises for uses that do not materially interfere with Tenant's use.

20. Tenant's Use of Water.

This Lease carries no right to use water. Tenant's fields will be unirrigated.

21. Insurance.

21.01. Landlord disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Any and all claims resulting from any obligation for which Tenant may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence are the sole obligation and responsibility of Tenant.

21.02. Tenant must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Lease and for the duration of this Lease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Landlord
2. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following: (a) Premises/Operations (b) Independent Contractors (c) Contractual Liability (d) Personal Injury Liability	For Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
3. Business Automobile Liability to	Combined Single Limit for Bodily

include coverage for:

- (a.) Owned/Leased Automobiles
- (b.) Non-owned Automobiles
- (c) Hired Automobiles

Injury, Death, and Property Damage of
\$1,000,000.00 per occurrence

21.03. Landlord may modify the insurance coverage and limits when deemed necessary and prudent by Landlord's Risk Manager, based upon changes in statutory law, court decisions, or circumstances surrounding this Lease, but in no instance will Landlord allow modification increasing Landlord's risk.

21.04. Each insurance policy must contain the following clauses:

"This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:

- (a) City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

- (b) Department of Asset Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio."

21.05. Tenant must require its insurance carrier(s) to deliver to Landlord's Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Landlord. Landlord may request

changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will provide 30 days' prior notice to Tenant and an opportunity to discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof.

21.06. Within 30 days after the Commencement Date, Tenant must deliver insurance certificates to Landlord's Risk Manager and the City Clerk, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

21.07. The Notices and Certificates of Insurance must be sent to the same addresses as for cancellation.

21.08. Nothing herein contained limits in any way Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees under this Lease.

21.09. Landlord and its agents and employees are not liable, and Tenant waives all claims, for any damage to persons or property sustained by Tenant or any person claiming through Tenant, that may occur on the Premises, or for the loss of or damage to any property of Tenant or of others by theft or otherwise, whether caused by other tenants or others.

22. Prohibited Interest in Contracts.

22.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of Premises, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

22.02. Tenant warrants and certifies as follows:

(i) Tenant and its officers, employees and agents are neither officers nor employees of the City.

(ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

22.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

23. Indemnity.

23.01. Tenant must indemnify Landlord and its agents, officials, and employees and hold them harmless of and from any and all loss, cost, liability, or expense arising from or related to either Tenant's or Landlord's activities on or regarding the Premises. Tenant's indemnity of Landlord includes the acts or omissions of those whose presence is through Tenant.

23.02. Nothing in this lease waives any governmental immunity available to Landlord under Texas Law, and nothing in this lease waives any defenses of the parties to claims by third parties under applicable law.

23.03. This indemnification is solely for the benefit of the parties hereto and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

23.04. Tenant must promptly deliver written notice to Landlord of any claim or demand subject to this indemnity. Tenant must investigate and defend such claim or demand at its sole cost. Notwithstanding any condition imposed by an insurance policy in which Tenant and Landlord are named, Landlord retains the right, at its option and at its own expense, to participate in any such defense provided by any insurance or self-insurance of Tenant without relieving Tenant of any of its indemnity.

23.05. This indemnity expressly covers the consequences of Landlord's own negligence, gross or otherwise and sole or concurrent, pre-existing defects, strict liability, or other legal fault.

24. Miscellaneous.

24.01. *Applicable Law.* **The construction of this agreement and the rights, remedies, and obligations arising thereunder are governed by the laws of the State of Texas.** But the Texas conflicts of law rules must not be used to cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

24.02. *Severability.* If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

24.03. *Successors.* This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

24.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

24.05. *Modification.* This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of a modification is sought. But any of the terms may be modified at any time by the party entitled to their benefit, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

24.06. *Third Party Beneficiaries.* This Agreement benefits only the parties and their successors and permitted assigns. It has no third party beneficiaries.

24.07. *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

24.08. *Captions.* Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

24.09. *Mediation.* As a condition precedent to bringing any suit to enforce or interpret this agreement or any aspect thereof, including an action for declaratory relief, the disputants must first submit in good faith to mediation by a mediator qualified under § 154.052, Texas Civil Practice and Remedies Code. Arbitration may be filed only after mediation by a mediator qualified as provided above. Laches, waiver, and estoppel based upon any reasonable delay relating to attempts to mediate as herein provided may not be asserted by either party hereto.

24.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, the counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

24.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, can alter the rights or obligations of the parties as contained in this agreement

In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:

**City of San Antonio, a Texas
municipal corporation**

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Tenant:

Wesley Atkison

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

