



THE CITY OF SAN DIEGO

June 7, 2001

Files: Property File - T623-1
Permit File - Orion Pay Phones
Job: 223120

Orion Pay Phones
10366 Roselle Street, Suite A
San Diego, CA 92121

Attention: Lynn M. Herkey

Re: Right of Entry Permit - 4202-4212 National Avenue, San Diego, CA 92113

The City of San Diego ("City") grants permission to Orion Pay Phones ("Permittee") to enter upon the above-referenced City-owned property ("Permit Area"), specifically a 3 ft. by 3 ft. area, as delineated on the attached Exhibit "A," upon the following terms and conditions:

1. Permittee's use of the Permit Area shall be limited to the right to operate, service and maintain a coin-operated pay phone for public use.
2. Consideration to City for granting this Permit shall be a percentage of gross receipts as outlined in the attached Exhibit "B," payable monthly commencing on the effective date hereof. "Gross receipts" as used in this Permit shall include all income resulting from use of the pay phone, exclusive of deductions. Permittee shall pay the permit fee at the office of the City Treasurer within sixty (60) days following the end of the month for which payment is made. Payments postmarked or paid in person after 60 days will be subject to a 5 percent late charge if 1 to 15 days past due, and to an additional 5 percent late charge if 16 or more days past due. In no event shall the late charge be less than \$25.
3. The term of this Permit shall commence on January 1, 2001. This Permit may be terminated at any time by either party upon 30 days advance written notice. This Permit is a temporary revocable license and shall in no event exceed a total period of three (3) years.
4. Permittee certifies that a policy of public liability and property damage insurance, in which "The City of San Diego" is named as an additional insured, has been secured in an amount of not less than \$1 million combined single limit liability with an occurrence claims form and that the policy shall be kept in force for the duration of this Permit. A certificate of the insurance shall be filed with the City Real Estate Assets Department upon execution of this Permit.



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

5. Permittee shall defend, indemnify, protect, and hold the City, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Permittee's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the Permit Area or the work and operations to be performed under this Permit, and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the City, its agents, officers, or employees.
6. Permittee agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
7. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
8. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
9. This Permit is revocable at any time by the City of San Diego. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this Permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this Permit.
10. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City of San Diego hereunder and that such tax shall be paid by Permittee before becoming delinquent.
11. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area.

12. Upon expiration or earlier termination of this Permit, Permittee shall at its sole cost remove all materials and repair and/or restore the Permit Area to its original condition, including any hazardous or toxic waste remediation, to the satisfaction of the City Manager.
13. Permittee shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.
14. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
15. Maintenance of the Permit Area shall be the sole responsibility of Permittee during the entire term of this Permit.
16. Permittee shall maintain complete and accurate records in a manner satisfactory to the City Manager from which the City of San Diego can determine the amounts of all income subject to percentage Permit fee payment. Permittee shall retain the records for a period of 3 years after the applicable rental periods. This provision shall survive termination of this Permit.
17. Permittee understands there is a pending City project planned in the vicinity of the Permit Area and upon City's request, Permittee agrees to relocate their improvements to a location satisfactory to City at the sole cost of Permittee. Furthermore, Permittee agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Permit. Permittee is also aware of and acknowledges City's plan to sell the real property that encompasses the Permit Area.
18. This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to the City Real Estate Assets Department, together with your insurance certificate and check for \$124.49 representing rent due for January through April 2001, made payable to the "City Treasurer," within 10 days from receipt hereof.

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If you should require additional information or have any questions, please call Chris Hargett, Property Agent, at 236-6766.

Very truly yours,

Paul J. Crawford

Acting Supervising Property Agent
Real Estate Assets Department

Date: 6-15-01

PTC/CEH/csn

Attachments

cc: County Assessor

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THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 15th DAY OF
June, 2001.

ORION PAY PHONES

By Lynn M. Herkey

By Sales Mgr.

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

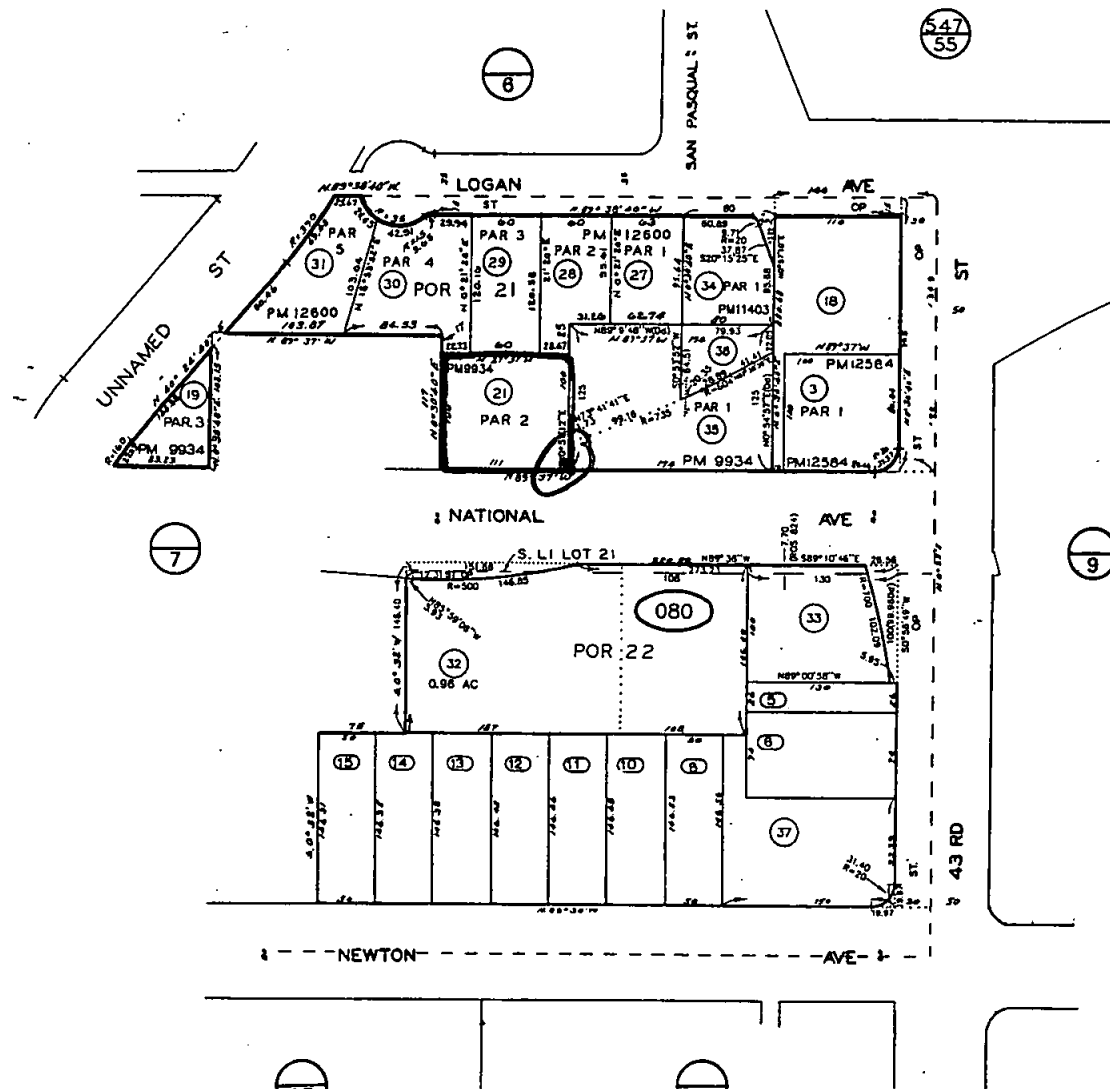
By Kenneth Leasley

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, City Attorney

By Penelope Dwyer
Deputy City Attorney

551-080



8/9/99 D.B.

CHANGES				
BLK	OLD	NEW	CUT	
060	2-3-4	18	73	4925
	19-22	81	639	
	23-24	82	1775	
	25-26	83	6247	
	27-31	84	2921	
	32-33	85	1447	
	34-35	86	1953	
	36-37	87	4712	
	38-39	88	1685	
	40-41	89	1685	
	42-43	90	1482	

SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 551, PAGE 08...

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

MAP 27-CARUTHERS ADD.
ROS 824,14185

EXHIBIT A

Exhibit "B"

Monthly Percentage Rent Schedule

\$000.00	to	199.99	=	30%
\$200.00	to	299.99	=	35%
\$300.00	to	399.99	=	40%
\$400.00	and	Over	=	50%