

CITY OF SAN DIEGO

**CONSENT TO ARTICLES OF MERGER OF PACIFIC BELL WIRELESS, LLC AND
PACIFIC BELL MOBILE SERVICES**

The City of San Diego ("City") consents to the Articles of Merger of Pacific Bell Wireless, LLC ("PB Wireless") and Pacific Bell Mobile Services ("PB Mobile") dated July 31, 1999 ("Articles of Merger"), attached as Exhibit "A".

RECITALS

This Consent to Articles of Merger is made with regard to the following facts:

A. City and PB Mobile have entered into the following Right of Entry Permits ("Permits"):

- i. City/Pacific Bell Mobile Services for City-owned property at Spring Canyon Road and Reisling, APN 319-211-35, dated October 1, 1996. [PB Mobile Site SD-210]
- ii. City/Pacific Bell Mobile Services for City-owned property at 3020 Coronado Avenue, San Diego, CA, dated November 23, 1998. [PB Mobile Site SD-294]
- iii. City/Pacific Bell Mobile Services for City-owned property at 1521 Statton Court, San Diego, CA, dated November 23, 1998. [PB Mobile Site SD-326-01]
- iv. City/Pacific Bell Mobile Services for City-owned property San Ysidro View Park, San Diego, CA, dated December 11, 1998. [PB Mobile Site SD-361-01]
- v. City/Pacific Bell Mobile Services for City-owned property at 10056, Scripps Poway Parkway, San Diego, CA, dated December 1, 1999. [PB Mobile Site SD-345-01]

B. City has consented to Sublease Agreements ("Consent to Sublease") with PB Mobile as a sub-tenant of the master lessee in the following leases and operating agreements ("Master Lease"):

- i. Master Lease - City/Wave House Belmont Park LLC, dated June 1, 1988, filed as Document RR-266064 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at 3146 Mission Blvd., dated February 10, 1997. [PB Mobile Site SD 162-03]
- ii. Master Lease - City/Arena Group 2000 L.P., dated March 29, 1993, filed as Document RR-281708-3 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at 3500 Sports Arena Boulevard dated November 11, 1998. [PB Mobile Site SD-320-02]

- iii. Master Lease - City/Zoological Society of San Diego, dated July 23, 1979, filed as Document 767195 in the Office of the City Clerk of City. Consent to Sublease a portion of City property at San Diego Zoo, dated August 24, 2000. [PB Mobile Sites SD-002-27 and SD-198-02]

- C. PB Wireless desires to obtain City's consent to the Articles of Merger and City is willing to consent to the Articles of Merger on the following terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants contained in this Consent to Articles of Merger, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Assumption. PB Wireless expressly assumes and agrees for the benefit of the City to be bound by, and to conform and comply with, every obligation of PB Mobile under the Permits, Sublease Agreements, and Consent to Subleases.
2. Subsequent Assignments. This Consent to Articles of Merger does not constitute a consent to any PB Wireless subletting or assignment and does not relieve PB Wireless or any person claiming under or through PB Wireless of the obligation to obtain the consent of the City to any assignment of Permits and Sublease Agreements.
3. Holdover. PB Wireless acknowledges that for those Permits that are currently on holdover this Consent to Articles of Merger does not, in any way, grant PB Wireless any extension of the term of the Permits.
4. Default Under the Permits, Sublease Agreements, and Consent to Subleases. In the event of breach by PB Wireless of any terms of any Permit or Consent to Sublease, such Permit or Consent to Sublease shall be subject to immediate termination by City. In event of breach by PB Wireless of any terms of any Sublease Agreements under the Master Leases or any inconsistency between Master Leases and Sublease Agreements, the terms of Consent to Subleases and Master Leases shall prevail. City may proceed directly against PB Wireless, any guarantors, or anyone else liable under the Permits or Consent to Subleases without first exhausting City's remedies against any other person or entity liable under the Permits or Consent to Subleases.
5. Hold Harmless. PB Wireless shall assume the defense of, indemnify, and hold harmless City, its elected officials, officers, representatives, agents, and employees from all claims, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the premises leased under the Master Lease and subleased under Sublease Agreements, or pursuant to a Right of Entry Permit, the condition of the

premises or from any act or omission of PB Wireless, its agents, and invitees; provided, however, PB Wireless'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. Insurance. PB Wireless shall be insured by an insurance carrier acceptable to the City against loss from public liability arising from the use or condition of or operation conducted on or from the lease premises under the Master Lease and subleased premises under the Sublease Agreements or the premises pursuant to Permits. Minimum coverage shall be Two Million Dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. PB Wireless shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds and PB Wireless shall provide City with a certificate of insurance confirming such and showing the policy limits. The certificate of insurance shall specify that the above-coverage may not be terminated, altered or canceled without thirty (30) days prior written notice by PB Wireless to the City.
7. General Provisions.
 - i. Controlling Law. The terms and provisions of this Consent to Articles of Merger will be construed in accordance with and will be governed by the laws of the State of California.
 - ii. Captions. Captions to the sections in this Consent to Articles of Merger are included for convenience only and do not modify any of the terms of this Consent to Articles of Merger.
 - iii. Capitalized Terms. All terms spelled with initial capital letters in this Consent to Articles of Merger that are not expressly defined in this Consent to Articles of Merger will have the same respective meaning given such terms in the Permit and Consent to Subleases.
 - iv. Entire Agreement; Waiver. This Consent to Articles of Merger constitutes the final, complete, and exclusive statement between the parties to this Consent to Articles of Merger pertaining to the terms of the City's consent to the merger of PB Wireless and PB Mobile pursuant to Articles of Merger, supercedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Consent to Articles of Merger by, nor is any party relying on, any representation or warranty outside those expressly set

forth in this Consent to Articles of Merger. Any agreement made after the date of this Consent to Articles of Merger is ineffective to modify, waive or terminate this Consent to Articles of Merger, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and specifically states that agreement modifies this Consent to Articles of Merger.

- v. Attorney Fees. If any party commences litigation against any other party for the specific performance, for damages for the breach or for the enforcement of any remedy pursuant to this Consent to Articles of Merger, the prevailing party shall be entitled to recover from the applicable party such costs and reasonable attorney fees as have been incurred.
- vi. Waiver. Nothing contained in this Consent to Articles of Merger will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Permits, Sublease Agreements, and Consent to Subleases. In the event of any conflict or inconsistency between the covenants, agreement, terms, provisions, or conditions contained in this Consent to Articles of Merger and those contained in the Permits, Sublease Agreements, and Consent to Subleases, then the covenants, agreement, terms, provisions, or conditions contained in the Consent to Articles of Merger will govern and control.
- vii. Notice. Any notice that may or must be given by any party under this Consent to Articles of Merger will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to City or PB Wireless shall be sent to the respective address set forth on the signature page below, or such other address as that party may designate for service of notice by a notice given in accordance with the provisions of this Section 7.vii. A notice sent pursuant to the terms of this Section 7.vii shall be deemed delivered (A) when delivery is attempted, if delivered personally, (B) three (3) business days after deposit into the United States mail, or (C) the day following deposit with a nationally recognized overnight courier.
- viii. Numbers. All words in the singular number shall include the plural, when the tense requires.

City and PB Wireless have executed this Consent to Articles of Merger as of the date shown.

PACIFIC BELL WIRELESS, LLC

Date 8/16/05, 2005

By: [Signature]
Name: Douc Miller

Title: General Counsel

Address of PB Wireless: 12920 S.E. 38th Street, Bellevue, WA, 98006

CITY OF SAN DIEGO

Date 8/23, 2005

By: [Signature]
City Manager

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date 9/1, 2005

By: [Signature]
Deputy City Attorney

VEB/cb

8/05/05

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