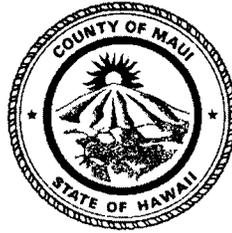


ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

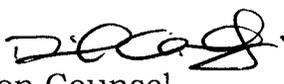
EDWARD S. KUSHI  
First Deputy

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COUNTY COUNSEL

MEMO TO: Robert Carroll, Chair  
Land Use Committee

FROM: David A. Galazin   
Deputy Corporation Counsel

DATE: October 2, 2018

SUBJECT: **CONDITIONAL PERMIT FOR SPRINT WIRELESS  
TELECOMMUNICATION FACILITY AT 3740 LOWER  
HONOAPIILANI ROAD (LAHAINA) (LU-67)**

This memorandum is in response to your request dated September 24, 2018, regarding the above-referenced subject matter. Based upon the information provided, the Conditional Permit application is subject to Federal Communications Commission (FCC) regulations, including the "Shot Clock" rule that requires County action on the permit within 150 days of the application being deemed complete. Pursuant to the determination by the Planning Department that the Application was complete on May 11, 2018, the County would otherwise need to take action by October 8, 2018, or the Applicant seek receive injunctive relief.

After speaking with the Applicant's representative, the Applicant has agreed to a 60-day extension of the Shot Clock through execution of an Extension Agreement, a copy of which is attached for your reference. The Council will have until December 7, 2018 to consider the permit application, and if approval is recommended, passage of the ordinance granting approval on second and final reading can be accomplished within this time frame.

If you have any questions, please do not hesitate to contact me.

DAG:maa  
Attachment

2017-0095

LU-67 2018-10-02 Memo to Chair

## FCC SHOT CLOCK EXTENSION AGREEMENT

This FCC Shot Clock Extension Agreement ("Agreement") is made and entered into this 28 day of September, 2018 ("Effective Date") by and between SprintCom, Inc., a Kansas corporation, ("SPRINT") and the County of Maui, a political subdivision of the State of Hawaii ("County").

### RECITALS

A. On December 27, 2017, the Maui County Department of Planning ("Department") received an application submitted by Wireless Resources, Inc., on behalf of SPRINT, for a Conditional Permit to construct a wireless telecommunication facility consisting of a 35-foot "monopalm" tower with an additional five feet of fronds at the top, and a 200 square foot lease area to contain accessory ground equipment, along with related appurtenances ("wireless facilities"), on real property located at 3740 Lower Honoapiilani Road, Lahaina, Maui, Hawaii, and identified for real property tax purposes as Tax Map Key No. (2) 4-3-006:004 (CP 2018/0001) ("Application"). The Application was deemed complete by the County on May 25, 2018.

B. The Maui Planning Commission held a public hearing on the Application on June 26, 2018, pursuant to Chapter 19.40, Maui County Code ("MCC"), and at the conclusion of the hearing, the Commission voted to recommend that the Application be approved by the Maui County Council, subject to certain conditions.

C. The Department's transmittal letter regarding the Application was received by the Maui County Council on August 30, 2018, as County Communication 18-314, and referred to the Council's Land Use Committee for further action.

D. On November 18, 2009, the Federal Communications Commission ("FCC") released a Declaratory Ruling clarifying Section 332(c)(7) of the Communications Act of 1934, as amended ("Shot Clock Order"). The Shot Clock Order established a "reasonable period of time" within which local permitting agencies, such as the County, must take action on an application once it is deemed complete. For a new tower (as opposed to collocation), the shot clock is 150 calendar days. A local permitting agency's failure to act within this time does not grant automatic approval of the application, but does permit the applicant to seek injunctive relief after 30 days.

E. Pursuant to the County's determination that the Application was deemed complete on May 25, 2018, the 150 day shot clock is currently set for October 8, 2018.

F. The County and SPRINT desire to continue the process for granting a Conditional Permit, in accordance with MCC Chapter 19.40 and the Council's Rules of Procedure, which require additional time to complete beyond October 8, 2018.

NOW, THEREFORE, the parties agree as follows:

1. The parties agree that the time period within which the County must act on the Application shall be extended by sixty (60) calendar days, to December 7, 2018, ("Extension Date") to allow for the hearings and decision-making required by law before the County Council can act on the Application.

2. If the County has not acted on the Application by the Extension Date, this Agreement shall not be construed as an admission by the County that such failure to act is unreasonable or unlawful, nor shall it be construed to waive or otherwise impair the rights of SPRINT with respect to any claim of unreasonable delay.

3. This agreement shall not be construed as a waiver of any defense available to the County to any claim filed by SPRINT, including but not limited to a statute of limitations defense based on the requirement that an unreasonable delay claim be commenced within 180 days after an application is filed.

4. This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute one and the same Agreement. The individuals whose signatures appear below on behalf of each party swear under penalty of perjury that they are authorized to execute this Agreement on behalf of the respective parties and to bind them to the terms thereof.

IN WITNESS WHEREOF, the Parties hereto have set their hands and caused this Agreement to be effective as of the Effective Date written above.

SO AGREED:

SprintCom, Inc.,  
a Kansas corporation

By WIRELESS RESOURCES, INC.

Its: AUTHORIZED REPRESENTATIVE

By: *Rich Conte* 9/28/18  
Rich Conte

Its: *Project Manager*

COUNTY OF MAUI

By \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approval Recommended:

\_\_\_\_\_  
MICHELE McLEAN  
Director of Planning  
County of Maui

Approved as to Form and Legality:

\_\_\_\_\_  
DAVID A. GALAZIN  
Deputy Corporation Counsel  
County of Maui

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