

DRAFT RESOLUTION NO. 2012-126

A RESOLUTION RATIFYING THE MEMORANDUM OF AGREEMENT (MOA) ENTERED INTO BY AND BETWEEN THE MUNICIPAL GOVERNMENT OF TAYTAY, RIZAL, REPRESENTED BY THE LOCAL CHIEF EXECUTIVE, HON. GEORGE RICARDO R. GACULA II AND ISOC INFRASTRUCTURE INC., REPRESENTED BY MR. JESUS G. CHUA, AS THE ACCREDITED COMMON TOWER PROVIDER OF THE MUNICIPALITY.

INTRODUCED BY: HON. KYLE GEORIC Y. GACULA

WHEREAS, ISOC, Infrastructure Inc., a duly registered firm engaged in the business of constructing common towers and infrastructure solutions, sought to be accredited as common tower provider in the municipality.

WHEREAS, Resolution No. 122 Series of 2019 adopted by the Sangguniang Bayan has authorized the Hon. George Ricardo R. Gacula II, to enter into Memorandum of Agreement with ISOC Infrastructure Inc., on the subject stated thereunder.

WHEREAS, pursuant to and on the faith of the above stated authority, the Memorandum of Agreement was already executed by the parties thereto and duly notarized on December ____ 2020.

WHEREAS, the ratification of the aforesaid Memorandum of Agreement by the Sangguniang Bayan would be beneficial to the municipality as it provides the facilities needed in rolling out a digitally connected municipality.

NOW THEREFORE, BE IT RESOLVED, as it is hereby resolved, by the 11th Sangguniang Bayan of Taytay, Rizal, in session duly assembled, to hereby ratifies the Memorandum of Agreement (MOA) entered into by and between the Municipal Government of Taytay, Rizal, represented by the Local Chief Executive, Hon. George Ricardo R. Gacula II, and ISOC Infrastructure Inc., represented by Mr. Jesus G. Chua as the common tower provider of the Municipality.

RESOLVED FURTHER, that copies of this Resolution be furnished to all concerned to all concerned for their information, reference and appropriate action.

OFFICE OF THE
SANGGUNIANG BAYAN
RECEIVED
NAME: Khorty
DATE: 12-11-2020
TIME: 11:40 am
CONTACT #: _____

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This **MEMORANDUM OF AGREEMENT** (hereinafter referred to as the “**MOA**”), entered into, and executed by and between the following parties:

The **Municipal Government of Taytay**, a government entity duly organized and existing according to law with address at Taytay Municipal Hall, Don Hilario Cruz, Taytay, Rizal, and represented in this act by its **Mayor, Honorable George Ricardo R. Gacula II**, hereinafter referred to as the “**LGU**”;

and

ISOC Infrastructure, Inc., duly organized and existing under the laws of the Republic of the Philippines, with principal address at Unit 601-609, 6th Floor Hanston Building, F. Ortigas Jr. Road, Ortigas Center, Pasig City, Metro Manila, Philippines, and represented by its **President, Jesus G. Chua Jr.**, hereinafter referred to as, “**ISOC**”.

(LGU and ISOC are at times individually referred to as a “Party”, and collectively as “Parties”)

WITNESSETH:

WHEREAS, it is the policy of the State to ensure the provision of strategic, reliable, cost-effective, and citizen-centric information and communications technology (“**ICT**”) infrastructure, systems, and resources as instruments of good governance and global competitiveness and to ensure the availability and accessibility of **ICT** services in areas not adequately served by the private sector;

WHEREAS, it is vital to state interest that common towers be made available, especially in the remote, unserved, and underserved areas, in order to increase the provision of telecommunications and broadband services by all industry players including new players entering the Philippine telecommunications market;

WHEREAS, **ISOC** aims to aid the **LGU** in its goal of providing reliable and accessible **ICT** services, especially in remote, unserved, and underserved areas, and provide proof of concept of telecommunications infrastructure such as common telecom towers, in-building solutions, poles, mast, etc.;

WHEREAS, **ISOC** has expressed interest to roll-out common telecom towers, in-building solutions, poles, masts, etc., and other telecommunications infrastructure to be used by the **ICT** industry in properties owned, controlled, and developed by the **LGU**, with the **LGU** providing reasonable assistance to **ISOC** in the case of privately-owned properties within the jurisdiction of the **LGU**;

WHEREAS, the **LGU** has passed Resolution No. 122 Series of 2019 authorizing the Municipality of Taytay represented by its Mayor, Honorable George Ricardo R. Gacula II to enter into a Memorandum of Agreement with **ISOC** represented by its President, Jesus G. Chua Jr., to be the accredited common tower provider of the municipality;

WHEREAS, the **LGU** and **ISOC** seek to enter into an agreement on the use of sites owned, controlled, and developed by the **LGU**, with the **LGU** providing reasonable assistance to **ISOC** in the case of privately-owned properties within the jurisdiction of the **LGU**, for the common towers and in-building solutions, poles, masts, etc. in public establishments, or the Common Tower Project (the “**Project**”);

NOW, THEREFORE, for and in consideration of the foregoing premises and the covenants hereunder, the Parties have mutually agreed to enter into this MOA under the following terms and conditions:

**Article I
AREAS OF COOPERATION**

The Parties agree to coordinate accordingly on matters related to the Project and provide adequate assistance to each other in the use of sites owned, controlled, developed, supervised, maintained, or overseen by the LGU for the roll-out of common towers and in-building solutions, poles, masts, etc.

**Article II
DUTIES AND RESPONSIBILITIES OF THE PARTIES**

The Parties:

1. Shall jointly decide on the number and locations of the sites, upon conformity of the LGU, which shall take into account those sites and locations deemed most optimal by ISOC for the purposes of the Project.

Ensure that the construction of telecommunication towers and installment of in-building solutions, poles, masts, etc. do not pose health risks and are not known to cause any health effects.

2. Agree that this MOA captures the minimum terms of the cooperation and/or the Project, and enter into a more defined agreement to be jointly discussed and agreed upon by the Parties may be settled soon hereafter taking into account ISOC's due diligence findings and Parties deliverables.
3. Whenever possible under the circumstances, the Project shall not substantially interfere with the normal operation or use of the property where it is placed or installed.
4. Shall execute such lease agreements, if necessary, subject to existing laws and rules and regulations as may be applicable, to implement the provisions of Article I hereof.

The LGU:

1. Agrees on the use of sites owned, controlled, and developed by the LGU, for the construction of common towers and the installation of in-building solutions, poles, masts, etc. in public establishments located in the municipality.
2. Commits to help ISOC in discussions with developers of township, townhomes, subdivisions, projects in Taytay for possible tripartite agreements between the Municipal Government, ISOC, and the developers to support the Project.
3. Agrees to assist and facilitate discussions with Mobile Network Operators (MNOs) who may wish to locate passive telecommunications infrastructure in the municipality.
4. Shall ensure that applications for permits for the Project are processed efficiently and approved in a timely manner in accordance with laws, rules, regulations, ordinances, and other government issuances. The LGU shall exercise discretion and control in the issuance of permits, licenses, approvals, consents, and other similar LGU-issued requirements for the Project, and whenever applicable, provide timely assistance and coordination for matters related to the Project.

5. Ensures that all personnel of ISOC are allowed proper and efficient access in areas where the common towers shall be constructed, and where the in-building solutions shall be installed.
6. Shall provide such other form of assistance to ISOC on a best efforts basis to enable ISOC to accomplish their duties and responsibilities under this MOA.

ISOC:

1. Will comply with the appropriate legal requirements and documents and shall file such applications as may be mandated by the LGU and required by law, rules, regulations, ordinances, or other government issuances relating to the implementation of the Project.
2. Will ensure that its personnel shall follow all ordinances, rules, and regulations of the LGU in the construction of the common towers and the installation of the in-building solutions, without prejudice to any reasonable arrangement that may facilitate the implementation of the Project in accordance with the proposed timelines.
3. Whenever necessary and if resources are available, ISOC will endeavor to assist the LGU in matters within its competency and capability for the benefit of the LGU regarding the possible application or use of this Project especially in times of calamities or natural or man-made disaster.
4. ISOC will comply with all legal, regulatory, and administrative requirements in relation to the Project and may expect reasonable assistance from the LGU in this regard.
5. Will assist the LGU, if possible under the circumstances and if resources are available, in disseminating information to the public through this project especially in times of calamities or other natural or man-made disaster.
6. Subject to due diligence results and the grant of all mandated and requisite approvals, ISOC will build or install structures which shall comprise of cell sites embedded and camouflaged in various street furniture whenever possible, including but not exclusive to the following:
 - a. Way finder street signages;
 - b. Signage on existing street poles;
 - c. Public benches;
 - d. Traffic lights;
 - e. Public utility vehicle waiting sheds; or
 - f. Public playgrounds.
7. Will do whatever else is reasonably necessary in order to give effect to the intent of this MOA.

Article III
WARRANTIES AND REPRESENTATIONS

The Parties represent (which representations shall survive the execution and performance hereof) and warrant:

1. That the person executing and signing this MOA are duly authorized and any action relative to the execution thereof is binding to the Party that he represents;
2. That this MOA has been duly authorized by all necessary corporate and/or government actions;  4

3. That this Agreement has been duly executed and constitutes a legal, valid, and binding obligation enforceable in accordance with its terms;
4. That ISOC is a duly organized corporation, validly existing, and in good standing and has the corporate power and authority to carry on its business and to enter into and perform its obligations under this Agreement;
5. That the LGU is a government agency validly existing as mandated by the laws of the Republic of the Philippines, duly authorized by the same to carry out its powers, duties, and functions in assuming and performing its obligations under this Agreement;
6. This MOA does not and shall not violate any law, governmental rule or regulation, judgment or applicable order, and will not violate any provision of, or constitute a default under any mortgage, contract, or other instrument.

Article IV COSTS

ISOC will ensure that the LGU shall not incur any cost in the implementation and execution of the Project. This shall not preclude any voluntary contributions that the LGU may make for the benefit of the Project, which shall be for its own account.

For clarity, costs unrelated to the implementation and execution of the Project shall not be shouldered by ISOC.

Article V OWNERSHIP OF PROPERTY

Any equipment, instrument, unutilized funds, and other related objects contributed by either Party shall remain the property of the contributing Party. Any permanent and immovable improvement, alteration, or refurbishment made by ISOC on the property of the LGU, shall be for the benefit of the Project with ISOC retaining ownership, provided that when changes, alterations, or improvements permanent in nature are made by ISOC on the property of the LGU, and the same cannot be removed without damaging the property, the same may at ISOC's option, become property of the LGU upon reimbursement by the LGU of the depreciated value of said improvements introduced by ISOC, unless otherwise agreed upon by the Parties. ISOC shall have the right to remove fixtures, furniture, vehicles, and other equipment installed or placed in the premises which are capable of being removed. In all cases, any tower or related infrastructure shall remain the property of ISOC.

The LGU may utilize any tower or related infrastructure owned by ISOC in a manner compliant with its intended use and subject to the fulfillment of requirements and conditions as determined by ISOC.

When the interest of the public requires, and if feasible under the circumstances, ISOC will remove or relocates its tower or related infrastructure upon the prior written request of the LGU. All costs, expenses, fees, amounts, and liabilities related to such request shall be for the account of the LGU

Article VI EFFECTIVITY, DURATION, AND RENEWAL

1. This MOA shall be effective for a period of ten (10) years from signing, unless sooner terminated by mutual consent of the Parties. It is understood that upon the expiration of the term, if no new agreement is entered into, this MOA is deemed renewed on an annual basis and under the same terms and conditions.

2. This MOA may be amended only by written and mutual agreement by the Parties.
3. Each Party reserves the right to pre-terminate the MOA at any stage, based on the following grounds:
 - a. Substantial violation of the terms and conditions stated in this MOA; Provided that, in the interest of completing the Project, in the event of a violation, the non-erring party shall grant to the erring party a thirty (30)-day period after receipt of written notice to cure such violation;

- b. Force Majeure events rendering the MOA legally and physically impossible to complete;

The term "Force Majeure" means:

- i. war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo which prevents implementation of the Project;
 - ii. rebellion, revolution, insurrection, terrorist act, military or usurped power or civil war occurring in the Republic of the Philippines; and
 - iii. earthquakes of intensity 6 and above, typhoons of signal number 3 and above, or other natural disasters of overwhelming proportions and which the parties could not have foreseen and taken protection against despite the exercise of extraordinary diligence.
 - c. By mutual agreement of both Parties.
4. Either party has the right to terminate this MOA any time, with cause to be discussed and agreed upon by the Parties, by giving thirty (30) days written notice of termination to the other party, specifying the date of termination desired.
5. Termination of this MOA shall be without prejudice to any rights of either Party which may have accrued prior to such termination.

Article VII NON-WAIVER OF RIGHTS

The failure of a Party to observe a strict performance of any of the terms, conditions, and covenants hereof, shall not be deemed as a relinquishment or waiver of any right/remedy that said Party is legally entitled, nor shall it be construed as a waiver of any subsequent breach of the same or other terms or conditions.

Article VIII GOVERNING LAW

The validity of this MOA and the construction of its terms and conditions, interpretation and enforcement of the rights and duties of the Parties shall be governed by the laws of the Republic of the Philippines.

Article IX DISPUTE RESOLUTION

In case of any dispute arising from the interpretation or implementation of this MOA, the parties shall endeavor to amicably resolve the same. If the parties are unable to resolve the dispute amicably within sixty (60) days from the occurrence of the dispute, either Party may submit the dispute to voluntary arbitration under the provisions of Republic Act No. 9285. 6

Article X
MISCELLANEOUS PROVISIONS

1. This MOA, including its Annexes, constitutes the entire agreement among the Parties and no representation, written or verbal, made prior to its execution and not otherwise incorporated in this Agreement shall bind the Parties. In case of inconsistencies between the interpretation of the Parties of the provisions of this Agreement and/or its Annexes, the interpretation of in accordance with the aims of the Project shall prevail.
2. The Parties agree to revise, amend, renew, supplement, or rescind this MOA as may be necessary during the effectivity thereof, in the interest of public service and by reason of national security or other reasonable grounds as mutually determined by the Parties, or for substantial violation of the terms and conditions of this MOA.
3. No amendments, modifications, extensions, or alterations to this MOA shall be valid or binding on either party unless expressed in writing and mutually accepted by both Parties. This MOA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
4. The LGU undertakes not to assign, transfer, nor convey their respective rights, titles, or interest in this MOA, nor any benefits arising therefrom, without first obtaining the written consent of ISOC, which consent shall not be unreasonably withheld.

ISOC has the right to assign any of its rights and/ or obligations under this MOA to any of its subsidiaries, affiliates, related parties or any third parties with at least 30-day-due notice to LGU.

5. If any provision of this MOA is for any reason found to be void, invalid and unenforceable, the unaffected remainder shall continue to be in full force and effect. The Parties shall promptly amend this MOA and/or execute such additional documents as may be necessary and/or appropriate to give legal effect to the void, invalid, or otherwise unenforceable provision in such a manner that, when taken with the remaining provisions, will achieve the intended purpose of the void, invalid, or otherwise unenforceable provision.
6. The Parties have participated jointly in the negotiation and drafting of this MOA and other agreements contemplated hereby and, in the event an ambiguity or question of intent or interpretation arises, this MOA shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this MOA.

IN WITNESS WHEREOF, the Parties hereto have signed this Memorandum of Agreement this _____ day of DEC 14 2020 2020 in TAYTAY RIZAL, Philippines.

MUNICIPALITY OF TAYTAY

George Ricardo R. Gacula II
Mayor

ISOC INFRASTRUCTURE, INC.

Jesus G. Chua, Jr.
President

SIGNED IN THE PRESENCE OF:

FIRST ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
TAYTAY RIZAL) ss.

BEFORE ME, a Notary Public for and in the City of TAYTAY RIZAL, Metro
Manila, Philippines, on this DEC 14 2020 day of DEC 14 2020, 2020, personally appeared:

<u>Name</u>	<u>I.D.</u>	<u>Date/ Place Issued</u>
George Ricardo R. Gacula II		

known to me and to me known to be the same person who executed the foregoing instrument and
acknowledged to me that the same is his free and voluntary act and deed as well as the free and
voluntary act and deed of the government entity which he represents, for the uses, purposes, and
considerations therein set forth.

WITNESS MY HAND AND SEAL this DEC 14 2020 day of DEC 14 2020, at
TAYTAY RIZAL, Philippines.

Doc No. 361;
Page No. 72;
Book No. X;
Series of 2020.

RONCES ANNE S. REYES - DE LEON
NOTARY PUBLIC UNTIL DEC. 31, 2021
COMMISSION NO. 19-09 / ROLL NO. 55634
PTR NO. 136947091 / 01-02-20 TAYTAY RIZAL
IBP NO. 101586 / RSM / 010620
MCLE COMPLIANCE NO. VI-0001726

SECOND ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
TAYTAY RIZAL) ss.

BEFORE ME, a Notary Public for and in the City of TAYTAY RIZAL, Metro Manila, Philippines, on this DEC 14 2020 day of _____, 2020, personally appeared:

<u>Name</u>	<u>I.D.</u>	<u>Date/ Place Issued</u>
Jesus G. Chua Jr.	TIN 198-771-356	

known to me and to me known to be the same person who executed the foregoing instrument and acknowledged to me that the same is his free and voluntary act and deed as well as the free and voluntary act and deed of the corporation which he represents, for the uses, purposes, and considerations therein set forth.

WITNESS MY HAND AND SEAL this DEC 14 2020 day of _____, at _____, Philippines.

Doc No. 372;
Page No. 11;
Book No. 1;
Series of 2020.

RONCES ANNE S. REYES - DE LEON
NOTARY PUBLIC UNTIL DEC. 31, 2021
COMMISSION NO. 19-09 / ROLL NO. 55634
PTR NO. 136947091 / 01-02-20 TAYTAY RIZAL
IBP NO. 101586 / RSM / 010620
MCLE COMPLIANCE NO. VI-0001726