

CONFIDENTIAL

MEMORANDUM OF UNDERSTANDING

Between

[MASTERCARD]

And

[CITY]

This Memorandum of Understanding ("MOU"), effective as of [____], 2018 (the "Effective Date"), summarizes the signatories' mutual intent to establish a public-private partnership, which shall not be a legal partnership or joint venture, (the "Partnership") between [Mastercard], [address], for itself and its affiliates ("Mastercard") and [City], [address] (the "City"). The Partnership contemplates City joining City Possible, a public-private partnership model pioneered by Mastercard to promote thought leadership, co-development, prototyping, and scaling of solutions emerging technologies. Mastercard and City (each a "Party" and collectively the "Parties"), will explore potential areas of collaboration relating to smart cities initiatives (the "Broad Objectives").

The provisions of this introductory section, Section I (City Possible Model), and Section II (Partnership Framework) of this MOU are not legally binding and merely constitute an expression of the Parties' mutual intent with respect to the Partnership and the Broad Objectives(s) and are subject to the negotiation, execution and delivery of definitive agreement(s) between the Parties setting out, in detail, the terms and conditions governing the Partnership and the Broad Objectives(s) (in each case, the "Definitive Agreement"). Neither Section I nor Section II of this MOU shall create any obligations on the part of Mastercard or the City with respect to the Broad Objectives(s) or any other matter. The provisions of Section III of this MOU, however, constitute binding agreements between the Parties.

BACKGROUND

- a. City is experiencing extensive growth and is facing significant challenges relating to urbanization.
- b. The public and private sectors have found that challenges faced by cities and their residents are best addressed through collaboration and co-development between relevant stakeholders.
- c. Collaboration between cities and the establishment of public-private partnerships accelerates the co-development, piloting and scaling of solutions, thereby enabling holistic city transformation.
- d. Public-private partnerships not only help to accelerate solution development but also serve to catalyze cities' investment and modernization programs and to promote knowledge sharing.

- e. Such partnerships leverage the use of technology assets and data insights to drive economic growth, innovation, and improved quality of life.

SECTION I

CITY POSSIBLE MODEL

Mastercard is collaborating with a number of leading global cities and other corporate participants to establish a new model of public and private sector engagement ("City Possible"). Such model may include the setup of Urban Co-development Centers ("UCDCs") in cities meeting additional contribution requirements, with a focus on prototyping smart city solutions that may be deployed for use worldwide. Under the City Possible program, Mastercard will engage with other private sector industry leaders and leading academic institutions and programs to aid in solving challenges facing cities. Each program participant will become part of a larger network to advise how cities can measurably become more inclusive, sustainable and efficient.

Mastercard recognizes City to be a leading innovator and an increasingly important shaper of smart city developments, making it a suitable candidate for joining City Possible. The Parties are each willing to leverage their respective assets and network to research, develop and potentially implement new solutions for City's most pressing urban challenges. Similar to Mastercard, the City shares the view that the establishment of public-public (*i.e.*, city to city) and public-private partnerships will further such goal. To ensure the success of the City Possible program, Mastercard will act as a facilitator and extend invitations to other cities for key engagements involving the City and other invitees.

SECTION II

PARTNERSHIP FRAMEWORK

1. Definitive Agreement. Each Party will act to further the Broad Objectives under the Partnership by negotiating in good faith the terms of Definitive Agreement(s) (including, without limitation, a membership form and pilot agreements).

2. Guiding Principles. The Parties will pursue the Broad Objectives by establishing a program of collaboration with focus on the following areas: data insights, technology innovation and connectivity, sustainable and inclusive growth, and digital accessibility. City will consider participating in a governance structure to support the program, it being understood and agreed that Mastercard will set out specific governance arrangements more fully in a Definitive Agreement.

3. Projects. The Parties recognize that the purpose of establishing City Possible is, in part, to identify projects of mutual interest and benefit for Mastercard and City in pursuit of co-development activities. To the extent so identified, Appendix A to this MOU will include a non-exhaustive list of potential projects to be evaluated by the Parties in furtherance of the Broad Objectives. Otherwise, each of Mastercard and City will from time to time negotiate in good faith the terms of mutually agreeable project addenda describing the Parties' activities to carry out the Broad Objectives.

4. Program Benefits. The Partnership is designed to promote City's:

- Recognition as a smart city and a testbed for innovation;
- Leadership position on inclusive digital innovation; and
- Ability to co-create and co-develop solutions with local impact.

Upon joining City Possible as a member and participating in the program under a Definitive Agreement, City will enjoy certain benefits, including (without limitation):

- Subscription to City Possible virtual community forum that (i) facilitates exchange of information and learnings between members, (ii) serves as a repository of shared best practices, policy prescriptions, and member contact information, and (iii) provides secure communication channel;
- Feedback and insights from City Possible corporate partners pertaining to (i) implementation of digital technologies, (ii) data analytics practices, and (iii) business modeling and methodologies;
- Invitation to a City Possible convening (as and when scheduled in Mastercard's sole discretion) held on the sidelines of a major industry event (e.g., Smart Cities Expo), affording City the opportunity to meet other city leaders and cultivate an international network;
- Invitation to host summits and workshops at a mutually agreed upon venue and otherwise attend City Possible accelerator courses curated by renowned academic institution(s) for the benefit of city leaders;
- Access to City Possible academic partners' research content and materials across multiple disciplines with opportunity to propose topics for further research and evaluation;
- Ability to solicit and acquire know-how and expertise from City Possible entrepreneurs, technologists, and other professional members; and
- Incidental business hospitality. Mastercard, in its sole discretion, may cover business hospitality (e.g. meals, events, airfare, hotel accommodation, ground transportation) in connection with the meetings described above. Before each engagement where Mastercard will offer business hospitality, Attachment A will be completed and provided to each member. If a member would like to accept any benefits listed in Attachment A, the member will return the completed document signed by his/her Authorized Approver before each engagement. An Authorized Approver is an employee of the member's organization who can affirm that accepting such benefits complies with the member's applicable local laws and internal policies. The Authorized Approver is not permitted to receive any benefits listed in Attachment A.

Mastercard will, at its discretion, periodically revise the City Possible program benefits based on member input and initiative results.

5. Programmatic Support. Mastercard commits to support the Partnership and operations of City Possible as follows:

- Allocate appropriate support to the City in connection with the Broad Objectives (e.g., consulting resources for business modeling or go-to-market execution). In light of the foregoing, resources dedicated to projects involving the City will be agreed on an individualized basis, as determined by Mastercard; and
- Make available data scientists for consulting purposes regarding (x) data analytics/insights and (y) digital technologies/services and share insights sourced from other program participants or affiliates (e.g., private sector partners, civic and academic contributors, and global influencers, to the extent permissible).

6. Other Key Terms; Definitive Agreement. Other key terms and details of each of the foregoing plus other reasonable and customary provisions for arrangements of this nature, including appropriate representations and warranties and customary indemnities, would be set forth in the Definitive Agreement(s), to be determined by the Parties' by mutual agreement and execution.

SECTION III

BINDING AGREEMENTS

1. City Contributions. As a City Possible member, City agrees to meaningfully engage with Mastercard and other program partners or affiliates and will in good faith consider:

- Defining problem statements and challenges for prospective project participants to resolve;
- Allocating appropriate staff support and resources (including, without limitation, technology, data insights, and physical space to host meetings and development sessions);
- Providing thought leadership through publication of position papers, attendance at sponsored industry events, and contribution to research assignments or projects;
- Articulating actionable goals, milestones and indicators consistent with the strategic imperatives of the mayor's office or task force;
- Identifying prospective local partners (including, without limitation, tech startups, civic engagement leaders, academic institutions, and community advocates) with whom to collaborate on work being conducted out of an UCDC;
- Contributing to product development and design for UCDC prototypes and advise on implementation and deployment efforts; and

- Building out a mentoring network program for emerging city leaders, cadres, managers, and public servants.

Further, City agrees to secure commitments from the Office of the Mayor (or equivalent body) acknowledging and pledging support to the City possible program consistent with the terms of this MOU. To further the Parties' pursuit of the Broad Objectives, and at the direction of the Office of the Mayor (or equivalent body), City will designate an executive sponsor with the appropriate level of seniority to determine the actions needed to promote the Partnership.

2. Intellectual Property Rights.

- a. IP Rights. For the purposes of this MOU, "IP Rights" means any and all rights, title and interest in (i) patents, utility models, designs (whether registered or unregistered), trademarks and trade and business names, copyrights (including copyrights in programs and semiconductor topographies), domain names, databases, moral rights, trade secrets, confidentiality and other proprietary rights including all rights to know-how practices, business models and other technical information, rights in the nature of unfair competition rights, rights to sue in passing off; (ii) the benefit of all registrations and applications to register any of the foregoing; (iii) any and all other rights similar or analogous to any of the foregoing arising or granted in any jurisdiction.
- b. Own IP Rights. The IP Rights held and/or controlled by a Party before the Effective Date and/or developed and/or acquired outside of the framework of this MOU (collectively, such Party's "Own IP Rights") shall remain the exclusive property of said Party.
- c. New IP Rights. In the event new IP Rights (excluding any improvements, enhancements or other modifications to Own IP Rights) come into existence and/or are created in the framework of the Partnership, the Definitive Agreement(s) shall address whether the new IP Rights shall be owned by City, Mastercard, or deemed to jointly belong (in equal shares) to both Parties ("New IP Rights"); *provided* that nothing herein shall limit a Party's rights in and to its Confidential Information. In any case, such New IP Rights may be freely used by the other Party in the framework of the Partnership during the Term to achieve the Broad Objectives. To that effect, each Party grants to the other a limited non-exclusive, royalty-free, worldwide, non-transferrable, non-sublicensable right during the Term to use any New IP Rights for the exclusive purpose of carrying out the Partnership.

3. Confidentiality.

- a. Confidential Information. For purposes of this MOU, Confidential Information means all information of whatever nature in any form concerning the business and affairs of a Party ("Disclosing Party") that the other Party ("Receiving Party") obtains, receives, or to which such other Party has access as a result of any discussions of dealings

between the Parties in connection with the Broad Objectives. Confidential Information includes without limitation (i) information constituting or concerning research, development, processes and methodologies; know-how, data, product architecture, designs and specification; algorithms, intellectual property, software, whether human-readable or machine-readable; product, marketing, sales and business development plans and strategies; competitive analyses; financial analyses and forecasts; cost and pricing data; procurement requirements and vendor information; customers and prospects; licensing and distribution arrangements; the identity, skills and compensation of employees, contractors and consultants; (ii) the fact that Confidential Information has been made available between the Parties, that discussion or negotiations are taking place between the Parties or any of the terms, conditions or other facts with respect thereto (including the status thereof); and (iii) any information that the Receiving Party knew or reasonably should have known to be confidential or of a proprietary nature.

- b. Exceptions. Confidential Information shall not include: (i) information that at the time of disclosure was, or later becomes, part of the public domain (through a source other than the Receiving Party); (ii) information lawfully obtained from a third party that was not under, and did not impose, an obligation of confidentiality with respect to such information; (iii) information that is independently developed by the Receiving Party without use or reference to Disclosing Party's Confidential Information; and (iv) information that was known by the Receiving Party prior to disclosure by the Disclosing Party.
- c. Treatment of Confidential Information. Subject to Section III.3(g), and for the duration of the Term, the Receiving Party shall (i) use Confidential Information only in connection with or in furtherance of the Broad Objectives; (ii) not disclose Confidential Information to any third party except as expressly permitted in writing by the Disclosing Party and then only if such third party has executed a non-disclosure agreement in form and substance satisfactory to the Disclosing Party; (iii) limit dissemination of Confidential Information to its employees, directors, officers, financial or legal advisors, or consultants that have a "need to know"; (iv) not remove or obscure proprietary rights notices that appear on Confidential Information and copies thereof; and (v) advise the Disclosing Party promptly in writing of any unauthorized disclosure or use of Disclosing Party's Confidential Information. Upon the written request of the Disclosing Party, the Receiving Party shall (at the Receiving Party's option) either return all Confidential Information to the Disclosing Party, or destroy all Confidential Information, within ten (10) days following receipt of the Disclosing Party's written request. The Receiving Party shall not be deemed to have violated this Agreement if the Receiving Party discloses Confidential Information in

response to a lawful process issued by a court or agency of competent jurisdiction; *provided* the Receiving Party shall have given Discloser, to the extent legally permitted to do so, at least ten (10) days' written notice of its intention to make such disclosure. Each Party agrees to keep in strict confidence all information regarding the terms of this MOU and the Broad Objectives, in accordance with this Section III.3.

- d. No License or Conveyance. Nothing in this MOU shall convey to the Receiving Party any right, title, interest, or license in or to any (i) Confidential Information, materials, or other information received from the Disclosing Party, or (ii) any trademark, trade name, or any other intellectual property rights of the Disclosing Party.
- e. No Representations or Warranties. All Confidential Information is delivered "as is" and all representations and warranties, express or implied, are hereby disclaimed. Without limiting the foregoing, the Disclosing Party disclaims all representations and warranties that the Confidential Information is accurate or reliable for any purpose whatsoever.
- f. Injunctive Relief. The Parties acknowledge and agree that any breach of this MOU may cause the Disclosing Party immediate irreparable harm for which money damages may be insufficient redress. In the event of any breach by the Receiving Party of the confidentiality obligations under this MOU, the Disclosing Party shall be entitled to seek immediate injunctive relief for such breach, in addition to any other right or remedy that the Disclosing Party may have at law or in equity.
- g. Freedom of Information Requests. Notwithstanding any terms in this Agreement to the contrary, Mastercard acknowledges that any obligations of the City pertaining to nondisclosure or confidentiality are subject to the City's requirements under any freedom of information act or local records retention act laws to disclose, produce, destroy, or retain any Confidential Information. Should the City be required to disclose Mastercard's Confidential Information, the City agrees to provide at least ten (10) working days' notice to Mastercard before disclosing the Confidential Information and shall use reasonable efforts to limit the disclosure to only such Confidential Information as the City is required by law to disclose.
- h. Survival. The Receiving Party's obligation not to disclose and not to use the Disclosing's Party's Confidential Information shall survive for two (2) years after termination or expiration of this MOU as long as such Confidential Information remains confidential and does not meet any of the exceptions set out under Section III.3.b above. The entry of any Definitive Agreement between the Parties will include superseding confidentiality terms.

4. **Personal Information.** The Parties acknowledge and agree that no personal information will be used or shared in connection with this MOU. Any expansion of the Parties' relationship to further develop the objectives that involve the processing of personal information will be addressed in a separate Definitive Agreement that will regulate the processing of personal information by the Parties.

5. **Public Announcements.** Mastercard and City shall not make any public disclosure or issue any press releases pertaining to the existence or content of this MOU or discussions between the Parties relating to the Partnership and/or the Broad Objectives without having first obtained the written consent of the other Party.

6. **Term and Termination.** The term of this MOU will commence on the Effective Date and continue thereafter until the earlier of: (x) twelve (12) months thereafter, or (y) the Parties' execution of a Definitive Agreement (the "**Term**"), unless terminated earlier pursuant to the terms of this MOU. Without prejudice to the nonbinding nature of Section I and Section II hereof, this MOU may be terminated and negotiations relating to the Partnership (including, without limitation, the Definitive Agreement(s)) may be abandoned at any time, by either Party by giving thirty (30) days' notice in writing to that effect. The respective obligations of the Parties under Section III.2 (Intellectual Property), Section III.3 (Confidentiality), Section III.4 (Public Announcements), Section III.5 (Term and Termination) (last sentence only), Section III.6 (Limitation of Liability), Section III.9 (Remedies), Section III.10 (Expenses), Section III.12 (Entire Agreement), Section III.13(Counterparts), and Section III.16 (Governing Law) survive termination hereof.

7. **Limitation of Liability.** Except with respect to a breach of (x) its confidentiality obligations, (y) its violation of anti-bribery and anti-corruption laws, or (z) any infringement of the other Party's IP Rights, in no event shall a Party be liable under any legal theory (including, without limitation, tort, contract, or strict liability) for any indirect, special, incidental, consequential, punitive or exemplary damages, regardless of whether a Party knew or should have known of the possibility of such damages.

Except for damages resulting from a Party's breach of (x) its confidential obligations, (y) its violation of anti-bribery and anti-corruption laws, or (z) any infringement of the other Party's IP Rights, each Party's maximum liability to the other Party arising out of, relating to, or in any way connected with this MOU, however caused and under any theory of liability, shall in no event exceed FIFTY THOUSAND U.S. DOLLARS (USD 50,000). Notwithstanding the foregoing, under no circumstances will Mastercard or City be liable to the other or any other third party for any liabilities, losses, damages, costs, or expenses incurred in the event negotiations between the Parties are terminated as provided under Section III.5 of this MOU.

8. **Anti-Bribery and Anti-Corruption Laws.** It is the intent of the Parties that no payments or transfers of value or other advantage shall be made or undertaken or attempted which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business for any person. Therefore, each Party agrees that it shall comply, and shall ensure that each of its personnel, agents and third parties acting on their behalf, complies with all applicable anti-bribery and anti-corruption laws in connection with

business dealings and activities between the Parties. Each Party, its respective employees, directors, temporary workers, agents, and third parties acting on its behalf shall not, in connection with the activities contemplated by this MOU or in connection with any other business activities involving the City or Mastercard, make, promise or offer to make any payment or transfer of anything of value or any other advantage directly or indirectly through a representative, intermediary agent or otherwise: (i) to any government official; (ii) to any political party; or (iii) to any other person for the purpose of improperly influencing any act, omission to act or decision of such official, political party or individual or securing an improper advantage to assist the Parties in obtaining or retaining business. Each Party warrants, represents and covenants to the other that it and each of its personnel, agents and third parties acting on its behalf shall not, in connection with any business activities involving the other, accept anything of value from any third party seeking to influence any act or decision or in order to secure an improper advantage to that third party. "Government official" is defined as any employee or officer of a government of a country, state or region, including any federal, regional or local government or department, agency, enterprise owned, in whole or in part, or controlled by such a government, any official of a political party, any official or employee of a public international organization, any person acting in an official capacity for, or on behalf of, such entities, and any candidate for political office.

9. Assignment. Neither this MOU nor any of the rights, interests or obligations hereunder shall be assigned by either Party; *provided* that the foregoing shall not limit or prevent Mastercard from assigning this MOU, or any of its obligations hereunder, to one of its corporate affiliates.

10. Remedies. In the event of any breach or threatened breach of Section III.3 (Confidentiality), Section III.4 (Public Announcements) or Section III.8 (Assignment) of this MOU by either Party, the other Party shall be entitled to equitable relief by way of injunction in addition to any other rights and remedies available to it at law or in equity.

11. Expenses. Each Party shall pay its own fees, costs and expenses (and those of its agents, independent contractors, and consultants) in connection with this MOU, except as expressly specified herein or otherwise agreed upon in writing by both Parties.

12. Severability. Should any section of this MOU be found to be invalid or unenforceable, such section (or part thereof) shall be deemed severed from this MOU and the other sections hereof shall remain in full force and effect as if this MOU had been executed without the offending section appearing.

13. Entire Agreement. This MOU constitutes the entire agreement and understanding of the Parties concerning the Partnership and Broad Objectives and supersedes all previous discussions between the Parties relating to the Partnership and Broad Objectives. No Party shall be bound by any representation with respect to the subject matter of this MOU other than as expressly set forth herein. This MOU may be amended or modified only by a writing expressly amending this MOU, signed by authorized representatives of the Parties. Any failure or delay by either Party to enforce any provision of or exercise any right under this MOU shall not be construed to be a waiver of that or any other right or remedy available to such Party. A provision of this MOU may only be waived by a writing signed by the waiving Party.

14. Counterparts. This MOU may be executed in one or more counterparts, each of which, taken together, shall constitute but one original document. Electronic signature shall be considered to be the same as original signatures for all purposes.

15. Captions. The captions in this MOU are included for convenience only and shall not affect the meaning or interpretation of this MOU.

16. Notices. All notices required or permitted hereunder will be in writing and will be deemed duly given on the date received if sent by personal delivery or by an overnight courier delivery service of general commercial use and acceptance (such as Airborne Express, Federal Express or UPS), addressed to the Parties as follows unless notification of change of address is given in writing:

For Mastercard:

Name:

Title:

Address:

with a copy to,
SVP & Counsel, Enterprise Partnerships
2000 Purchase Street
Purchase, NY 10577

For City:

Name:

Title:

Address:

17. Governing Law; Disputes. This MOU shall be construed, interpreted and performed exclusively according to the laws of the State of New York, without giving effect to any principles of conflicts of law that would mandate or permit application of the substantive law of any other jurisdiction.

Upon the occurrence of any dispute arising out of or relating to this MOU ("Dispute") and notice thereof by one Party to the other pursuant to Section III.15, the Parties will attempt to resolve the Dispute promptly by good faith negotiations between the appropriate members of each Party's executive leadership. If no resolution is reached within thirty (30) days from receipt of the initial notice (which time may be extended by mutual written agreement), then either Party may submit the Dispute to final adjudication in the state and federal courts located in New York, New York.

[Signature Page Follows]



IN WITNESS WHEREOF, the undersigned have executed this MOU as of the Effective Date.

[CITY]

[MASTERCARD]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A

Business Purpose for Activity (per paragraph 4 of Agreement): _____

Member Name: _____

Type/Name of Activity: _____

Date of Activity: _____

Business Hospitality:

Benefit	Value Per Person	Accept	Decline
Meal(s)			
Event			
Ground Transportation			
Hotel Accommodation			
Airfare			

By accepting and signing below, [Name of Member's Authorized Approver] affirms that [Member Name's] receipt of these benefits complies with applicable local law and is consistent with his/her internal policies.

Name of Member's Authorized Approver: _____

Signature of Member's Authorized Approver: _____