EXECUTIVE ORDER NO. 10 -16
ACCEPTANCE OF GIFTS BY CITY OFFICERS AND EMPLOYEES

WHEREAS, the citizens of Philadelphia must have confidence that their government operates, and City of Philadelphia officers and employees act, according to the highest ethical standards and without improper influence or considerations other than the best interest of the public; and,

WHEREAS, it is incumbent upon City officers and employees to avoid real or perceived conflicts of interest that could undermine the citizens' trust; and,

WHEREAS, clear and unassailable rules regulating the giving of gifts to, and the acceptance of gifts by, City officers and employees in the Executive and Administrative Branch are critical to establishing and maintaining the citizens' trust;

NOW, THEREFORE, I, JAMES F. KENNEY, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:

SECTION 1. Definitions.

For purposes of this Executive Order, the following definitions shall apply:

(a) *Chief Integrity Officer.* A position in the Office of the Mayor created to promote honesty, integrity, transparency and accountability throughout the Executive and Administrative Branch in the day-to-day operations of City government. The duties of the Chief Integrity Officer are set forth in Executive Order 2-16.

(b) *Family member.* A parent, step-parent or foster parent; spouse; life partner; child, step-child or foster child; brother, sister or like relative in-law; grandparent; grandchild; great-grandparent; great-grandchild; aunt; uncle; nephew; niece; first cousins; or the spouse or life partner of one of these individuals.

(c) *Gift.* A payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel or lodging or anything of value given to, or for the benefit of, a City officer or employee, unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reportable as required by law, a commercially reasonable loan made in the ordinary course of business, such as a home mortgage loan, or a gift received from a family member of the officer or employee.

(d) *Gift to the City.* A gift that (1) has a legitimate governmental purpose; or (2) cannot be returned to the donor for practical reasons, such as it is too large or cost-prohibitive to return; or (3) is received from an anonymous donor; or (4) is donated in response to a solicitation of contributions from City officers or employees to further the goals or initiatives of the Executive and Administrative Branch (e.g., pre-K initiative, literacy programs, etc.), without the expectation of

private benefit in return or any special treatment promised or accorded.

(e) *Government entity*. An agency, office, department, board, commission, authority, or other entity that is part of the United States or of a state, local, or foreign government.

(f) *Inspector General.* An independent office within the Executive and Administrative Branch created to investigate and resolve instances or patterns of fraud, waste, corruption or abuse of office related to the operations of City government or those who transact business with the City or receive financial benefits from the City. The duties of the Inspector General are set forth in Executive Order 7-14.

(g) *Integrityworks.* The official website of the Office of the Chief Integrity Officer.

(h) *Life Partner.* A member of a Life Partnership that meets the criteria set forth in Code Section 9-1102(1)(r) and is verified pursuant to Section 9-1123(1) (relating to verification of life partnerships).

(i) *Major life event.* Marriage, birth or adoption of a child, death or serious illness of a family member, milestone wedding anniversaries (e.g., 25th or 50th anniversary) or milestone birthdays (e.g., 21st or 30th birthdays), retirement, or a one-time and momentous religious or cultural life cycle event, such as baptism, first communion or bar/bat mitzvah. An annual non-milestone anniversary or birthday or an annual holiday does not qualify as a major life event.

(j) *Money or monetary gifts*. Cash, checks, money orders, or the equivalent, including pre-paid debit or gift or credit cards.

(k) *Officer or Employee*. The Mayor or any individual appointed to a position in the Executive or Administrative Branch of the City including, but not limited to, members of agencies, boards and commissions over whom the Mayor has appointment and removal authority, irrespective of whether their members serve full-time or intermittently, or with or without compensation.

(l) *Official action*. An act or omission taken by a City officer or employee in his/her official capacity that requires discretion and is not ministerial in nature.

(m) *Official superior*. Any City officer or employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of another officer's or employee's official duties or those of any other official superior of the employee. An officer or employee is considered to be the subordinate of any of his/her official superiors. For purposes of this section, the term "official superior" shall also include the Mayor.

(n) *Person.* A business, individual, corporation, non-profit, union, association, firm, partnership, committee, political committee, club, or other organization or group of persons.

(o) *Reception.* An afternoon or evening event at which only items such as appetizers, beverages, or light fare are served or a morning event at which only items such as coffee, juice, pastries or bagels are served.

(p) *Registered Lobbyist.* Any person that engages in lobbying on behalf of a principal for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of The Philadelphia Code, including an attorney at law while engaged in lobbying.

(q) *Solicit.* To directly or indirectly request, ask, appeal for, or demand any gifts that fall within the confines and definitions of this Executive Order.

SECTION 2. Prohibited Gifts

(a) Categories of Prohibited Gifts

(1) No City officer or employee may accept or receive a gift of any monetary value from a person who, at the time or within 12 months preceding the time a gift is received, (a) is seeking, or has sought, official action from that officer or employee; or (b) has operations or activities regulated by that officer's or employee's department, agency, office, board or commission, or, in the case of members of the Mayor's Cabinet, has operations or activities that are regulated by any department, agency, office, board or commission within the Executive and Administrative branch; or (c) has a financial or other substantial interest in acts or omissions taken by that officer or employee, which the officer or employee is able to affect through official action.

(2) No City officer or employee shall accept or receive a gift of any value from a registered lobbyist.

(3) No person shall offer, make or render any gift to any City officer or employee where receipt of such a gift by the recipient would be prohibited under Section 2(a)(1) hereof.

(4) No City officer or employee shall accept or receive money or monetary gifts of any value from the sources described in Section 2(a)(1), 2(a)(2) and 2(a)(3). This prohibition shall not apply to voluntary monetary donations of nominal value to support the participation of a superior in a charitable event, as long as the superior has not personally solicited the donation and the donation will not financially benefit the superior or his or her family members, as described in Section 4(c)(4).

(5) No City officer or employee shall solicit a gift of any value from any person. This prohibition shall not apply to a donation that is not given to an individual officer or employee but is instead donated in response to a solicitation of contributions from officers or employees to further the goals or initiatives of the Executive and Administrative Branch (e.g., pre-K initiative, literacy programs, etc.), without the expectation of private benefit in return or any special treatment promised or accorded, as described in Section 1(d)(4); or to invitations or

gift registries associated with major life events.

(b) Procedure for Returning Prohibited Gifts

(1) In the case of the Mayor, the Office of the Chief Integrity Officer shall establish a process for the appropriate disposition of prohibited Gifts received by the Mayor.

(2) Except as provided in Section 2(a)(5), any City officer or employee who receives a gift that is prohibited by this Executive Order shall, within three days of receiving the gift, notify the donor by postal mail or e-mail that (a) he/she is unable to accept the gift, (b) of the reason the gift cannot be accepted, and (c) that he/she is (i) returning the gift to the donor, or (ii) paying the donor the full value of the gift.

(3) Concurrent with the notification provided in Section 2(b)(2), the City officer or employee, within three days of receiving the gift, shall notify the Executive Director of the Philadelphia Board of Ethics, the Chief Integrity Officer, the Inspector General and the City officer's or employee's direct supervisor by postal mail or e-mail that he/she has returned the gift to the donor, asked the donor to pick up the gift or paid the donor the full value of the gift and provide the following information: (a) officer's or employee's name and title, (b) the source of the gift, (c) the date the gift was received or accepted, (d) the date the gift was returned or paid for, and, if paid for, the amount paid, and (e) any other relevant circumstances surrounding the receipt of the gift. For purposes of this section, the direct supervisor for Cabinet members and City officers and employees in the Office of the Mayor is the Chief of Staff to the Mayor, as the Mayor's designee.

(4) A copy of the notifications required by Section 2(b)(2) and 2(b)(3) shall be retained by the City officer or employee and all other recipients.

(5) Any City officer or employee who is offered money or monetary gifts of any value from any person should report this immediately to the Inspector General and the Chief Integrity Officer.

SECTION 3. Exceptions.

The prohibitions set forth in Sections 2(a)(1), 2(a)(2) and 2(a)(3) shall not apply to:

(a) Food, beverages or entertainment provided at a reception that is open to the public for which attendees do not have to purchase a ticket or for which no invitation is required.

(b) Promotional offers of discounted goods, services, food, drink or entertainment, or rebates, when offered to all members of a large recipient group (e.g., all members of a department).

(c) Attendance, entertainment, food and beverages at a celebration of a major life event of a friend, including another City officer or employee, for which attendees do not have to purchase a ticket. On such occasions, consistent with the City's ordinance, no City officer or employee shall accept

or receive any monetary gifts or gifts worth more than $99 in the aggregate per calendar year from a prohibited source as described in Sections 2(a)(1) and 2(a)(2).

(d) Light food and beverages (e.g., soft drinks, coffee, pastries, snacks, salads, sandwiches, and other modest refreshments) provided to all participants in the ordinary course of a meeting, at the site of the meeting, for the purpose of permitting work at the meeting to continue. This exception shall not apply to meals served at any restaurant, club or other establishment outside a place of business at which a meeting is held, even if the meeting continues at such restaurant, club or other establishment.

(e) Items of little intrinsic value, such as greeting cards, bottles of water, t-shirts, caps, plaques, certificates, and trophies that are offered to a City officer or employee on the occasion of a public appearance, visit, speech, presentation or the like.

(f) Gifts resulting solely from the City officer's or employee's membership in a bona fide charitable, professional, educational, labor or trade organization when generally made available to the same class of members of such entities.

(g) Gifts resulting solely from the City officer's or employee's spouse's or life partner's business or employment activities, when it is clear the gift is intended for use by the officer's or employee's spouse or life partner and, in the case of invitations to events, it is customary to include a spouse or life partner as an additional invitee.

(h) An item that is perishable and not practical to return to the donor, as long as the officer or employee to whom the gift is given, within three days, donates the gift to charity, shares it with co-workers or destroys it.

(i) A Gift to the City, which must be accepted pursuant to the procedures established in Section 7.

(j) A gift from a government entity.

SECTION 4. Gifts Between Employees.

(a) Except as provided in this section, a City officer or employee may not give a gift to, or make a donation towards a gift for, the officer's or employee's official superior; or solicit a contribution from other officers or employees for a gift to, or towards a gift for, the officer's or employee's official superior.

(b) Except as provided in this section, a City officer or employee shall not accept or receive a gift from a subordinate City officer or employee.

(c) The restrictions in subsections (a) and (b) shall not apply to the following:

(1) Food and beverages provided to, and gifts of a nominal value exchanged between, individual City officers or employees irrespective of rank or position or among co-workers as part of a department, agency, office or board or commission event where food, beverages and the

exchange of gifts is customary (e.g., a holiday party). It is permissible to solicit voluntary monetary contributions of a nominal amount for such intra-office events.

(2) Personal hospitality provided at, and items given in connection with, an event held at the residence of a City officer or employee that are of a type and value customarily provided to guests of the officer or employee at such events.

(3) Gifts from a subordinate officer or employee to an official superior on occasions that are major life events or that terminate the subordinate-official superior relationship, such as resignation from City employment or transfer to another City department, agency, office or board or commission. However, on such occasions, consistent with the City's ordinance, no City officer or employee shall accept or receive any monetary gifts or gifts worth more than $99 in the aggregate per calendar year from a subordinate officer or employee.

(4) Gifts from a subordinate officer or employee to an official superior where the gift is in the form of a voluntary monetary donation of nominal value to support the participation of the superior in a charitable event (e.g., running in a marathon to raise money for cancer research), as long as the superior has not personally solicited the donation and the donation will not financially benefit the superior or his or her family members.

(d) Notwithstanding any other provision of this section, an official superior shall not solicit or coerce a gift from a subordinate City officer or employee.

SECTION 5. Other Limitations on Gifts.

(a) No person shall give a gift to a City officer or employee through another person if this Executive Order would prohibit the person from giving the gift directly to the officer or employee.

(b) A gift to another person is a gift to a City officer or employee if the officer or employee solicits the gift, except as provided in Section 1(d)(5).

(c) If a person offers a City officer or employee a gift prohibited by this Executive Order, the officer or employee shall not suggest or request an alternative recipient, such as a charity of the officer's or employee's choice.

SECTION 6. Valuation of Gifts

(a) The value of the gift is the retail cost the City officer or employee would incur to purchase the gift. An officer or employee who does not know the retail cost of a gift shall estimate the retail cost by reference to similar items of like quality.

(b) The value of a ticket or invitation entitling the holder to food, refreshments, entertainment, travel or any other benefit shall be the face value of the ticket.

SECTION 7. Gifts to the City

(a) A gift will be deemed a "Gift to the City," and may be accepted under one of the following circumstances:

(1) *The gift has a legitimate governmental purpose.* In the case of an invitation to an event, convention, conference, seminar or fact-finding trip (which could include admission, entertainment, food, drink, travel and/or lodging), the head of the City officer's or employee's department, agency, office, board or commission, or his or her designee, shall determine whether the officer or employee receiving such an invitation may attend by considering the following factors: the number of invitees to the event; whether the invited officer or employee is the appropriate person to promote or represent the City; whether the event is related to the officer's or employee's official duties and/or expertise; whether the officer or employee is scheduled to deliver a speech, make a presentation, serve on a panel, or otherwise represent the City in his/her official capacity; whether the officer or employee will receive training or information to use in fulfilling his/her official duties, the value of a ticket to the event and if the invitation to the event comes with "extras" unrelated to the permissible "Gift to the City" (e.g., a private dinner with a small group of invitees, free spa services at a hotel).

(2) *The gift is cost-prohibitive to return.* In such a case, the head of the City officer's or employee's department, agency, office, board or commission, or his or her designee, shall determine the equitable use or disposition of the item, including, but not limited to, offering the item to a City museum, selling the item at a public auction where the proceeds go to the City Treasury or to benefit another City effort or initiative, sharing the item within the officer's or employee's department, or sending the item to another department, agency, office, board or commission that might have an interest relevant to the item. Where applicable, items within this subsection must follow the disposition requirements as described in The Philadelphia Home Rule Charter Section 8-203. In disposing of the item, the head of the City officer's or employee's department, agency, office, board or commission, or his or her designee, shall not reveal the name of the donor.

(3) *The donor of the item is anonymous and the item cannot be returned.* In such a case, the head of the City officer's or employee's department, agency, office, board or commission, or his or her designee, shall determine the equitable use or disposition of the item.

(4) *The item has been solicited to further a City goal or initiative.* Occasionally, to further the goals or initiatives of the Executive and Administrative branch, City officers or employees so authorized may solicit contributions of funds, goods, or services from any person subject to this Executive Order. Such donations are considered "Gifts to the City" because they are being made without the expectation of private benefit in return. No special treatment may be promised or accorded to any donor by any officer or employee because of a donation made or refused, and there shall be no appearance or suggestion of special treatment because of a donation made or refused. Any person who currently has or is seeking a non-competitively bid contract or financial assistance from the City, must disclose those solicitations, and, if provided, any donations (that is, payment of money, provision of services, or any other thing

of value) as set forth in The Philadelphia Code § 17-1402(b)(i)(4).

(b) All "Gifts to the City" described in Section 7(a)(1) require written approval that identifies the date of the receipt and nature of the gift and describe how the officer's or employee's participation or attendance furthers a legitimate governmental purpose by taking into consideration the factors listed in that Section. Written approval shall be provided before acceptance of the gift.

(1) Although the provisions of this Executive Order apply to the Mayor, the ceremonial and other public duties associated with this particular position make it impractical to require the Mayor to obtain written approval before acceptance of "Gifts to the City."

(2) Cabinet members and City officers and employees in the Office of the Mayor must obtain written approval of "Gifts to the City" from the Chief of Staff to the Mayor, as the Mayor's designee.

(3) Mayoral appointees to City boards and commissions covered by this Executive Order must obtain written approval of "Gifts to the City" from the chair of the appointees' respective board or commission.

(4) All other City officers and employees not identified in Section 7(b)(1), 7(b)(2) or 7(b)(3), shall obtain written approval from the head of the officer's or employee's department, agency, office, board or commission, as designees of the Mayor.

(c) City officers and employees may be obligated to report a "Gift to the City," as described in Section 7(a)(1), when the value of such is in excess of the applicable financial threshold on any annual Financial Disclosure Statement(s) the officer or employee is required to file.

SECTION 8. Penalties.

(a) Any City officer or employee who violates this Executive Order may be subject to appropriate sanctions with respect to his/her City employment. Such sanctions may range from letters to the officer's or employee's personnel file to dismissal from City employment. All sanctions are to be determined by the officer's or employee's direct supervisor and the head or chairperson of the officer's or employee's agency, department, office, board or commission, after consultation with the Chief Integrity Officer and the Chief Administrative Officer.

(b) In the case of violations of this Executive Order by City contractors or any person receiving financial assistance from the City, sanctions may range from disqualification from participation in particular City contracts to debarment or loss of financial assistance, depending on the nature of the particular violation.

SECTION 9. Advice and Guidance under Executive Order

(a) The interpretation of this Executive Order, and advice on compliance with its provisions, shall be given by the Office of the Chief Integrity Officer. Referrals shall be made to the Philadelphia Board of Ethics, the Office of the Inspector General or the State Ethics Commission, as appropriate.

(b) Notwithstanding anything to the contrary in this Executive Order, the Chief Integrity Officer shall have the authority to issue waivers or restrictions, if requested in advance of the acceptance of a gift and if, in his/her judgment, such waiver or restriction would not be inconsistent with the efficient, accountable and transparent operation of government.

SECTION 10. Conformance with Other Laws

Nothing in this Executive Order shall be deemed to authorize a City officer or employee to accept a gift of any value in violation of any other applicable federal, state or local law or regulation. To the extent other requirements are imposed by The Philadelphia Code, this Executive Order does not supersede or supplant those requirements.

SECTION 11. Dissemination of Executive Order

This Executive Order shall be distributed to all current officers and employees of the Executive and Administrative Branch, to all newly appointed officers and employees upon their appointment and, where practical, to any person who may be considered a prohibited source under the Executive Order. Guidance on the Executive Order shall be included in all ethics training sessions provided by the Office of the Chief Integrity Officer, and included on *IntegrityWorks*.

SECTION 11. Repeals

Executive Order No. 3-11 is hereby rescinded.

SECTION 12. Effective Date

This Executive Order shall take effect immediately.

10/26/16

DATE

James F. Kenney

JAMES F. KENNEY, MAYOR