



## **Stephen Siller Tunnel To Towers Foundation**

### **Conflict of Interest Policy**

#### **I. Purpose**

The purpose of this Conflict of Interest Policy (the “Policy”) is to protect the interests of the Stephen Siller Tunnel To Towers Foundation (“Tunnel to Towers”; the “Foundation”) when the Foundation is contemplating a transaction or arrangement that might benefit the private interests of an officer, director or key employee of the Foundation, and ensure that all officers, directors and key employees act in the Foundation’s best interests. This Policy is intended to supplement but not replace any applicable laws governing conflicts of interest for nonprofit and charitable corporations.

#### **II. Definitions**

##### **1. Interested Person**

Any director, officer, or key employee of Tunnel to Towers that has a direct or indirect financial interest as defined below.

##### **2. Related Party**

(a) Any director, officer or key employee of Tunnel to Towers or any affiliate of the Foundation, or (b) any relative of any director, officer or key employee of Tunnel to Towers or any affiliate of the Foundation, or (c) any entity in which any individual described in clause (a) and (b) of this subparagraph has a thirty-five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).

##### **3. Related Party Transaction**

Any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the Foundation or any affiliate of the Foundation is a participant.

##### **4. Key Employee**

Any person who is in a position to exercise substantial influence over the affairs of the corporation as referenced in 26 U.S.C. 4958(f)(1)(A) and further specified in 26 CFR 53.4958-3(c), (d) and (e) or succeeding provisions.

#### **5. Affiliate**

Any entity controlled by, in control of, or under common control with Tunnel to Towers.

#### **6. Conflict of Interest**

1. A conflict of interest arises:
  - a. when an interested person has personal interests or concerns that conflict with the interests or concerns of Tunnel to Towers, or
  - b. when there is bias or the appearance of bias in a decision-making process that would reflect a dual role played by an interested person of the Foundation, or
  - c. when a related party transaction is being considered.

#### **7. Financial Interest**

1. A person has a financial interest if the person has directly or indirectly, through business, investment or family:
  - a. an ownership or investment interest in any entity with which the Foundation has a transaction or arrangement, or
  - b. a compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement, or
  - c. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement.
2. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
3. A person who has a financial or other interest may have a conflict of interest only if the Executive Board of Directors (the “Executive Board”; the “Board”) decides that a conflict of interest exists.

### **III. Duty to Disclose**

1. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of such interest to the Executive Board.

2. An interested person is under a continuing obligation to disclose any potential conflict of interest as soon as a potential conflict of interest is known or reasonably should be known.

#### **IV. Determining and Addressing the Conflict of Interest**

1. After disclosure of the conflict of interest, an interested person shall have the opportunity to present all material facts about the possible conflict or transaction to the Executive Board. The Board also may request the interested persons be available for questions prior to deliberations.
2. Once an interested person makes a presentation to the Board, he/she must leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest. The remaining Board members shall decide if a conflict of interest exists.
3. A person who has a conflict of interest with respect to a contract or transaction that will be voted on at a meeting will not be counted in determining the presence of a quorum for purposes of the vote.
4. An interested person is prohibited from improperly influencing the deliberation or voting on the matter giving rise to such conflict of interest.

#### **V. Related Party Transactions**

1. Tunnel to Towers shall not enter into any related party transaction unless the transaction is determined by the Executive Board to be fair, reasonable and in the Foundation's best interest at the time of such determination. Any director, officer or key employee who has an interest in a related party transaction shall disclose in good faith to the Board the material facts concerning such interest.
2. Any related party transaction involving the Foundation and in which a related party has a substantial financial interest, the Executive Board shall:
  - a. Prior to entering into the transaction, consider alternative transactions to the extent possible;
  - b. Approve the transaction by not less than a majority vote of the directors present at the meeting; and
  - c. Document in writing the basis for the Board's approval, including its consideration of any alternative transactions.
2. No related party may participate in deliberations or voting involving such related party transaction except to present information concerning the related party transaction at a Board meeting prior to the deliberations or voting hereto.

## **VI. Violations of the Conflict of Interest Policy**

1. If the Board has reasonable cause to believe an interested person has failed to disclose actual or possible conflicts of interest, it shall inform such person of the basis for such belief and afford he/she an opportunity to explain the alleged failure to disclose.
2. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board determines an interested person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## **VII. Records of Proceedings**

1. The minutes of the Board and meeting at which an actual or possible conflict of interest is discussed or voted upon shall contain:
  - a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.
  - b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any notes taken in connection therewith.
2. The minutes of the Board and meeting at which a Related Party Transaction is discussed or voted upon shall contain:
  - a. The names of the persons who disclosed a Related Party Transaction, the Related Parties with respect to such Related Party Transaction, a description of the Related Party Transaction, the content of the discussion, and the basis for the Board's approval of the Related Party Transaction, including consideration of any alternative transactions.
  - b. The names of the persons who were present for discussions and votes relating to the Related Party Transaction and a record of any notes taken in connection therewith.

## **VIII. Compensation**

1. A voting member of the Board who receives compensation, directly or indirectly from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.
2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

## **IX. Annual Statements**

1. Each director shall annually review this Policy.
2. Prior to the initial election of any director and annually thereafter, such director shall sign a Disclosure and Affirmation of Compliance Statement which affirms that such person:
  - a. has received a copy of the Conflict of Interest Policy,
  - b. has read and understands this Policy,
  - c. has agreed to comply with such Policy,
  - d. will disclose potential conflicts of interest by identifying any relationships, positions or circumstances in which he or she is involved that he or she believe could contribute to a conflict of interest, and
  - e. has agreed to file a supplemental Disclosure whenever a potential conflict arises.
3. All Disclosure and Affirmation of Compliance Statements shall be submitted to the Secretary of the Foundation. The Secretary shall provide a copy of all completed statements to the Chairman of the Board.

## **X. Periodic Reviews**

1. To ensure that the Foundation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from the federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:
  - a. whether compensation arrangements and benefits are reasonable and are the result of arm length's bargaining.
  - b. whether acquisitions of assets or property from any officer or director result in inurement or impermissible private benefit.

## **XI. Use of Outside Experts**

1. In conducting the periodic reviews provided for in Article VII, the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted.