



For Immediate Release

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Transbay Joint Powers Authority Denies Withholding Reports of Tilting and Excessive Settlement of the Millennium Tower

San Francisco (September 13, 2016) – Reports that the Transbay Joint Powers Authority (TJPA) agreed to withhold data showing the tilt and excessive settlement of the Millennium Tower are incorrect. Rather, the TJPA made public its obligation to collect and share monitoring data with the developer of the Millennium Tower, Millennium Partners (MP). Disclosure of that monitoring data to prospective condo buyers and existing owners in the Millennium Tower was entirely MP’s obligation, and the TJPA did nothing to prevent such disclosure.

In October 2008, approximately two years before the TJPA started work on the Transit Center, MP agreed to grant the TJPA a five-foot underground Easement on MP’s property for the north wall of the Transit Center (“2008 Easement”). Under the 2008 Easement, the TJPA agreed to monitor the movement of the Millennium Tower and provide the monitoring reports to MP. The 2008 Easement is a public document recorded in the official records in March 2009. The 2008 Easement does not require either party to keep the monitoring reports confidential, and the TJPA never intended that its monitoring reports would be confidential.

In January 2010, the TJPA provided a monitoring report to MP indicating that the Millennium Tower had experienced excessive vertical settlement and tilt to the northwest, away from the Transbay Terminal. The TJPA provided this information to MP 8 months *before* the TJPA started any work on the Transbay Project.

In February 2010, the TJPA anticipated that the Millennium Tower would continue to experience excessive settlement and tilt due to its defective foundation. The TJPA further anticipated that MP would blame the TJPA for movement of the Millennium Tower occurring after the TJPA started work on the Transit Center—even though the TJPA intended to construct a \$58 million buttress that would protect the soil under the Millennium Tower from movement in response to work on the Transit Center. Thus, the TJPA suggested to MP that the parties agree in advance to limit the TJPA’s exposure to potential litigation by MP. In a February 26, 2010 agreement, that was superseded by a March 17, 2010 agreement, the parties agreed to keep confidential

documents exchanged to aid such settlement discussions (“2010 Confidentiality Agreement”). After a brief period, the discussions terminated and were never resumed.

The 2010 Confidentiality Agreement did not cover the monitoring reports the TJPA was obligated to prepare under the 2008 Easement. Shortly after the parties signed the 2010 Confidentiality Agreement, however, TJPA staff mistakenly designated one set of monitoring data prepared under the 2008 Easement as subject to the 2010 Confidentiality Agreement. The TJPA realized its mistake and did not designate any further monitoring reports as confidential. Indeed, the TJPA provided nearly 30 monitoring reports to MP after that point, up to and including the last report in June 2016, none of which were labeled confidential. The TJPA did not prevent MP from disclosing the monitoring reports.

Even if the 2010 Confidentiality Agreement applied to the monitoring reports prepared under the 2008 Easement – which it did not – the 2010 Confidentiality Agreement permitted MP to disclose any document subject to the agreement if required by law.

The monitoring reports show that the Millennium Tower was tilting to the northwest, away from the Transbay Terminal, and had settled vertically approximately 10 inches *before* the TJPA started demolition or construction for the Transit Center in August 2010. This excessive movement is attributable to MP’s inadequate foundation, which does not reach bedrock. The TJPA’s work is not the cause of the continued tilting and excessive settlement of the Millennium Tower.

About the Transbay Transit Center

The Transbay Transit Center, known as the “Grand Central Station of the West,” is a revolutionary transportation facility that will transform the South of Market neighborhood into the new heart of downtown. The Transit Center will connect eight Bay Area counties and 11 transit systems, including future High Speed Rail. The Transbay Transit Center Phase 1 is scheduled to open at the end of 2017. To learn more about the project, please visit our website at www.TransbayCenter.org.

The Transbay Transit Center project is made possible in part by the U.S. Department of Transportation, State of California, Metropolitan Transportation Commission, Proposition K Sales Tax dollars provided by the San Francisco County Transportation Authority, City and County of San Francisco, San Francisco Office of Community Investment and Infrastructure, San Mateo County Transportation Authority and AC Transit.

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