Agenda Item No. (10)(A)
Special Order of Business
(REVISED DECEMBER 20, 2021)

To: Board of Directors
Meeting of December 17, 2021

From: Joseph M. Wire, Auditor-Controller
Denis J. Mulligan, General Manager

Subject: **INFORMATIONAL REPORT ON AMALGAMATED TRANSIT UNION ("ATU") PENSION PLAN'S ACTUARIALLY DETERMINED CONTRIBUTION SHORTFALL**

Recommendation

This report on the ATU pension plan's actuarially determined contribution ("ADC") shortfall is provided for informational purposes only and does not require any action.

Summary

This report provides follow-up information responding to discussion by the Board of Agenda Item No. (10)(D) Special Order of Business, at the Board Meeting of November 19, 2021, "Informational Report on Pension Plans Covering District Employees"[1] regarding the four pension plans covering District employees ("Pension Plans Report"), and, in particular, the ATU pension plan ("ATU Plan"). This report summarizes information provided to the ATU Plan's Board of Trustees by the Plan's Actuary earlier this year regarding the Plan's current ADC, as well as a summary of analyses prepared in prior years by the ATU Plan's Actuary about the effects of certain potential Plan changes on the ADC and the Plan's funding level. This report also responds to questions raised by Board members during discussion of the Pension Plans Report regarding application of funding relief provisions in the American Rescue Plan Act of 2021 ("ARPA") to the ATU Plan, as well as information for the historical contribution rates for the pension plans covering District employees.

A. ATU Plan's ADC "Shortfall"

The "ADC" is the total contribution (employer and employee) determined by the plan's Actuary that, when combined with all other actuarial assumptions about future changes to the value of plan assets and liabilities, is projected to result in a fully funded pension plan within a given timeframe.

[1] Available at: 2021-1119-boardmeeting-no10d-informationalrepregardpensplans.pdf (goldengate.org).

As noted in the Pension Plans Report, the District and employee contribution rates for the ATU Plan are established in collective bargaining.

The ATU Plan's Actuary presented the actuarial valuation report for the Plan, as of January 1, 2021 (Exhibit 1), at a meeting of the Plan's Board of Trustees in August, 2021. According to information in that report, the ATU Plan's current ADC "shortfall" (i.e. the difference between the ADC rate and the combined negotiated employer and employee contribution rates), based on pre-COVID payroll, is 6.13%, as summarized below:

1.1.21 Actuarial Valuation page #				
81	**Anticipated Payroll - PreCovid**		**$ 26,002,274**	
58	**Plan Actuarially Determined Contribution ("ADC") - PreCovid**	**45.70%**	**$ 11,883,039**	(a)
	Employer Contributions	32.50%	$ 8,450,739	
	Employee Contributions	7.07%	$ 1,838,361	
	Total Contributions	**39.57%**	**$ 10,289,100**	(b)
	Plan ADC Shortfall	**6.13%**	**$ 1,593,939**	(c)=(a)-(b)

B. Prior Actuarial Analyses regarding Effects of Potential ATU Plan Changes on ADC

As described in the Pension Plans Report, the ATU Plan provides certain benefit features that are unlike the benefit features of the District's other three pension plans, and that compound the ATU Plan's funding issues by increasing Plan costs. In 2014 and in 2019, the Actuary for the ATU Plan presented information to the ATU Plan's Board of Trustees regarding the effects of modifying certain of those benefit features on the Plan's funding status and ADC.

The Actuary's May 19, 2019 presentation (Exhibit 2), and Actuary's letter to the ATU Plan's administrator, dated April 14, 2014, (Exhibit 3) outline certain proposed benefit changes and their estimated effects on the ADC shortfall, as determined by the Actuary as of those dates. **Although these analyses by the ATU Plan's Actuary have not been updated since initially prepared, this information illustrates the potential effects of certain benefit changes on the ATU Plan's ADC shortfall and funding level.**

The ATU Plan Actuary's prior analyses, and information in the ATU Plan's January 1, 2021 actuarial valuation report, show there are four changes that would most improve the ATU Plan's funding status, as described below. Based on the Actuary's prior projections and the January 1, 2021 actuarial valuation report, the combined effects of the four changes would result in an estimated overall reduction in the ADC shortfall, or increase in funding percentage, ranging from 7.03% - 10.23% ($1.8 - $2.7million), <u>which would fully eliminate the Plan's current ADC shortfall of 6.13% ($1.6million)</u>.[2]

[2] An updated analysis prepared by the ATU Plan's Actuary at the request of the Plan's Board of Trustees likely would provide more precise estimates of the effects of these changes on the Plan's current ADC and funding level.

As explained in the Pension Plans Report, the ATU Plan's Board of Trustees is authorized to make benefit changes, taking into account factors such as the Plan's funding status and the estimated actuarial impact of the change. As described in the Pension Plans Report, such changes could be applied to current employees, under the California Supreme Court's recent ruling in the "*ACERA*" case, which held that pension plan changes made for a purpose such as ensuring the solvency of the plan (i.e. changes that "bear some material relation to the theory of a pension system and its successful operation") can be applied to current employees under the "vested rights" doctrine.[3]

1. ***Eliminate Joint and Survivor Annuity Subsidy***
   (Source: Exhibit 2, Pages 7 and 8)

   Effect on ADC Shortfall: Reduces ADC shortfall by **0.68% - 1.66%**

   As explained in the Pension Plans Report, unlike the other three District pension plans, the benefit paid to an ATU retiree who selects a 50% joint and survivor ("J&S") annuity form of benefit under the ATU Plan is not reduced to account for the cost of the benefit paid to the retiree's survivor. Because the cost of the survivor benefit is not taken into account in calculating the retiree's monthly benefit amount, the Actuary's analysis refers to this as a "J&S subsidy."

   According to the Actuary's 2019 analysis, if the "J&S subsidy" were eliminated, the ADC shortfall would be reduced by **1.66%** ($432,000 based on the January 1, 2021 valuation's pre-COVID anticipated payroll). Under the scenario whereby employees who were eligible for retirement immediately retired before the effective date of the change, the Actuary estimated that elimination of the "J&S subsidy" would reduce the ADC shortfall by **0.68%** ($177,000 based on the January 1, 2021 valuation's pre-COVID anticipated payroll).

2. ***Change Early Retirement Age from 50 to 52 and Eliminate Early Retirement Subsidy***
   (Source: Exhibit 2, Pages 9 and 10)

   Effect on ADC Shortfall: Reduces ADC shortfall by **4.11% - 4.95%**

   As explained in the Pension Plans Report, under the other three District pension plans, if a participant retires prior to "normal retirement age" as defined in the plan, their benefit amount is reduced to account for the early retirement. Under the ATU Plan, there is no reduction in benefit amounts for early retirements, and employees can retire as early as age 50, with 25 years of service.

   According to the Actuary's 2019 analysis, (1) increasing the early retirement eligibility age from 50 to 52 (with 25 years of service); and (2) making early retirement benefit amounts "actuarially equivalent" to the benefit amount under a "2% @ age 60" formula[4] for non-

[3] See *Alameda County Deputy Sheriffs' Association et al. v. Alameda County Employees' Retirement Association et al.*, 9 Cal. 5th 1032, 1093 (2020).
[4] This means the normal retirement benefit for non-PEPRA members would be equal to 2% of final average earnings, multiplied by years of covered employment, payable beginning at age 60. For retirements earlier than age 60, benefit amounts would be actuarially reduced to be equivalent to the "2% @ 60" benefit amount.

PEPRA members would reduce the ADC shortfall by **4.95%** ($1.3 million based on the 1/1/21 valuation's pre-COVID anticipated payroll). Under the immediate retirement scenario, the Actuary estimated that the combined increase in early retirement age and elimination of the early retirement subsidy would reduce the ADC shortfall by **4.11%** ($1.1 million based on the January 1, 2021 valuation's pre-COVID anticipated payroll).

3. Use Three-Year Average Pay for the Average Final Earnings
(Source: Exhibit 3, Page 1)

Effect on ADC Shortfall: Reduces ADC shortfall by **1.08% - 2.46%**

As explained in the Pension Plans Report, members in the ATU Plan are able to "spike" their pension in the year prior to their retirement by working longer, higher paying runs and/or a significant amount of overtime hours such that their retirement benefit amount does not correlate to their typical yearly earnings. The rules for calculating retirement benefit amounts under the other three District pension plans do not accommodate this type of pension "spiking", meaning that participants in those plans generally are paid a retirement benefit related to their typical earnings over a given period of employment. Changing the benefit formula under the ATU Plan to use a non-PEPRA employee's average final earnings during a three-year period, rather than a one-year period, would reduce the impact of this pension "spiking." Because a three-year average earnings period already applies to PEPRA members of the ATU Plan, the change to a three-year period for non-PEPRA members would standardize this Plan provision for all ATU Plan members.

According to the Actuary's 2014 analysis, calculating benefits on the basis of the member's average final earnings in a three-year period instead of a one-year period would reduce the ADC shortfall by **2.46%** ($640,000 based on the 1/1/21 valuation's pre-COVID anticipated payroll). Under the immediate retirement scenario, the Actuary estimated that using a three-year average final earnings period would reduce the ADC shortfall by **1.08%** ($281,000 based on the January 1, 2021 valuation's pre-COVID anticipated payroll).

4. Increase Non-PEPRA Member's Contribution Rate to 50% of Normal Cost
(Please refer to Exhibit 1, page 83)

Effect on ADC Shortfall: Reduces ADC shortfall by **1.16%**

To comply with PEPRA, ATU Plan PEPRA members must contribute at least 50% of the "normal cost"[5] of their benefits, as determined by the Plan's Actuary. The current ATU Plan PEPRA member contribution rate is 7.25%. ATU Plan non-PEPRA members' contribution rates are established through collective bargaining. The current ATU Plan non-PEPRA member contribution rate is 7%.

According to the information on page 83 of the ATU Plan's January 1, 2021 actuarial valuation report (Exhibit 1), the normal cost for non-PEPRA members is 16.31% (as compared to

[5] The "normal cost" means the portion of the present value of projected Plan benefits that is attributable to the current year of service.

14.95% the PEPRA members). If the contribution rate for non-PEPRA members was 50% of normal cost, as it is for PEPRA members, that contribution rate would increase from 7% to 8.16%, which would result in a decrease in the ADC shortfall of approximately **1.16%** ($302,000 based on the January 1, 2021 valuation's pre-COVID anticipated payroll).

Combined Effects of Four Changes

The chart in Exhibit 4 summarizes the combined effects on the ADC shortfall of the changes outlined above, as previously determined by the ATU Plan's Actuary and shown in the January 1, 2021 actuarial valuation report, to result in reductions of the ADC and to have a positive effect on the Plan's funding level. The Actuary's analyses of the first three changes included two estimates of the effects on the ADC: one based on current assumptions regarding retirement activity, which resulted in a greater effect on the ADC shortfall, and a second estimate assuming immediate retirement of all eligible members prior to the effective date of the change, which resulted in a smaller effect on the ADC shortfall. As shown in Exhibit 4, the combined effects of the four changes resulted in an estimated reduction in the ADC shortfall ranging from 7.03% to 10.23%. An abbreviated chart using the estimates in the immediate retirement scenarios (the more conservative estimates of effects on the ADC) is presented below:

		PLAN ACTUARIALLY DETERMINED CONTRIBUTION ("ADC") SHORTFALL 1/1/21 ACTUARIAL REPORT (PRE COVID)		
		Anticipated Payroll (page 81 of 1.1.21 Valuation)		$ 26,002,274
a		**Plan Actuarially Determined Contribution ("ADC")**	**45.70%**	**$ 11,883,039**
		Employer Contributions	32.50%	$ 8,450,739
		Employee Contributions	7.07%	$ 1,838,361
b		**Total Contributions**	**39.57%**	**$ 10,289,100**
c	(a-b)	**Plan ADC Shortfall**	**6.13%**	**$ 1,593,939**
		PROPOSAL TO FUND PLAN ADC SHORTFALL (Immediate Retirement of All Eligible Actives Scenario)		
		Impact to ADC Shortfall from Eliminating Joint & Survivor Subsidy	-0.68%	$ (176,815)
		Impact to ADC Shortfall from Changing Early Retirement Age from 50 to 52 (25 yrs of service) and Removing Early Retirement Subsidy	-4.11%	$ (1,068,693)
		Impact to ADC Shortfall from using 3 Yr Average Pay	-1.08%	$ (280,825)
		Impact to ADC Shortfall from increase in NonPEPRA Employee Contribution Rate to 50% of Normal Cost (8.16% vs. 7%)	-1.16%	$ (301,626)
d		**Impact to ADC Shortfall from Plan Changes**	**-7.03%**	**$ (1,827,960)**
		PLAN ADC EXCESS AFTER PROPOSED PLAN CHANGES		
e	(c-d)	**Plan ADC Excess after Plan Changes**	**0.90%**	**$ 234,020**

C. Potential Application of ARPA Funding Relief to ATU Pension Plan

During the Board's review of the Pension Plans Report at the November 19, 2021 meeting, a question arose regarding application of pension plan funding relief provided under the ARPA to the ATU Plan. Under the ARPA, certain collectively bargained pension plans were granted temporary relief from compliance with minimum funding rules that apply to "Taft-Hartley" plans, which are governed by the federal Employee Retirement Income Security Act of 1974 or ERISA. The ARPA also created a special financial assistance program for ERISA-governed Taft-Hartley plans that are severely underfunded, intended to prevent or forestall insolvency of those plans. Because the ATU Plan covers public agency employees, it is not subject to ERISA, and thus the ATU Plan is not eligible for any of the ARPA funding relief programs.

D. Historical Contribution Rates for Pension Plans Covering District Employees

The District has comparable contribution history of the four pension plans covering District employees readily available for the last 14 years. The historical negotiated employer and employee contribution rates (as a percentage of wages) for the ATU pension plan, from March 1, 2008 through current, are summarized below:

			Classic	PEPRA
		District	**Employee**	**Employee**
Eff 3/1/08 -	2/28/09	15.165%	2% (in 2009)	NA
Eff 3/1/09 -	2/28/15	17.165%	2%	NA
Eff 3/1/15 -	2/28/16	18.165%	3%	NA
Eff 3/1/16 -	2/28/17	19.165%	4%	NA
Eff 3/1/17 -	12/31/17	20.165%	5%	NA
Eff 1/1/18 -	8/31/18	22.165%	7%	7.25%
Eff 3/18/20 -	Current	32.500%	7%	7.25%

For comparative purposes, below is a fourteen-year history of the District Employer ("ER") contribution rates and dollar amounts from fiscal year 2007/2008 through fiscal year 2020/2021 for the four pension plans covering District employees:

Source: District's Annual Comprehensive Financial Statements (some restated for consistency)

	Calpers	CalPERS	IBU	IBU	MEBA	MEBA	ATU	ATU
FY	ER Rate	$	ER Rate	$	ER Rate	$	ER Rate	$
20/21	34.612%	$15,952,000	27.0%	$ 472,000	15.4%	$ 297,000	32.5%	$ 5,815,000
19/20	32.862%	$14,771,000	23.9%	$ 746,000	14.5%	$ 407,000	22.165% - 32.5%	$ 5,498,000
18/19	30.757%	$13,267,000	16.3%	$ 813,000	19.3%	$ 424,000	22.165%	$ 5,275,000
17/18	29.155%	$11,406,000	20.9%	$ 752,000	14.1%	$ 346,000	20.165% - 22.165%	$ 4,976,000
16/17	27.282%	$11,453,000	20.0%	$ 653,000	14.1%	$ 322,000	19.165% - 20.165%	$ 4,318,000
15/16	24.567%	$ 9,475,000	21.0%	$ 597,000	13.0%	$ 283,000	18.165% - 19.165%	$ 4,000,000
14/15	21.875%	$ 7,899,000	19.4%	$ 540,000	13.4%	$ 253,000	17.165% - 18.165%	$ 3,700,000
13/14	21.264%	$ 7,575,000	18.1%	$ 491,000	12.1%	$ 244,000	17.165%	$ 3,575,000
12/13	20.742%	$ 7,612,000	18.2%	$ 427,000	9.9%	$ 140,000	17.165%	$ 3,592,000
11/12	21.473%	$ 8,004,000	18.2%	$ 393,000	7.6%	$ 117,000	17.165%	$ 3,509,000
10/11	16.372%	$ 8,927,000	14.6%	$ 356,000	8.3%	$ 116,000	17.165%	$ 3,510,000
09/10	16.188%	$ 8,937,000	15.1%	$ 293,300	8.3%	$ 117,000	17.165%	$ 3,430,000
08/09	16.565%	$ 9,038,000	12.6%	$ 312,000	9.3%	$ 113,000	15.165% - 17.165%	$ 3,242,000
07/08	16.707%	$ 9,117,000	12.6%	$ 257,000	9.3%	$ 121,000	15.165%	$ 3,054,000

KEY:

- **CalPERS**: Miscellaneous (all employees except those represented by ATU, IBU or MEBA) employees participate in the CalPERS Pension Plan.
- **Amalgamated Transit Union ("ATU")**: ATU bus operators participate in the ATU Pension Plan.
- **Inland Boatmen's Union ("IBU")**: Ferry deckhands and terminal agents participate in the IBU Pension Plan.
- **Marine Engineers' Beneficial Association ("MEBA")**: Ferry vessel masters participate in the MEBA Pension Plan.

Fiscal Impact

There is no fiscal impact associated with this report.

Attachments: Exhibit 1: ATU Plan's Actuarial Valuation Report as of January 1, 2021
Exhibit 2: Actuary's May 19, 2019 Presentation
Exhibit 3: Actuary's Letter to ATU Plan Administrator, dated April 14, 2014
Exhibit 4: Chart of Combined Effects of Plan Changes on ADC Shortfall