Diversion Agreement

This Diversion Agreement is made to be effective as of the 1st day of December, 2004, by and between Maryland Public Employees Council 67 and its affiliated local unions, Baltimore Municipal Employees Local 44, Nurses Local 558 and HCD Local 2202 a/w American Federation of State, County and Municipal Employees (the "Union") and the Mayor and City Council of Baltimore, for itself and all of its constituent agencies (the "City").

RECITAL

Whereas, effective as of January 1, 2004, the Mayor and City Council began to inform workers who are employed by it that the City does not offer permanent light or restricted duty to workers who are covered under the City Charter by the City's Civil Service; and,

Whereas, because their medical condition prohibits certain employees from performing the essential functions of their classification, the City has informed those workers that the City does not have any positions of employment available to them for which they qualify, and, accordingly, the City has initiated proceedings to terminate those workers from all employment and association with City Government; and,

Whereas, consistent with Article 22 of the Baltimore City Code (2000), the City desires to make available to workers who are assigned to the Union's bargaining units the opportunity to file and qualify for retirement benefits, to include ordinary disability benefits or accidental disability benefits under the Employees' Retirement System of the City of Baltimore before any employee is terminated from City employment;

Now, therefore, the City and the Union covenant and agree as follows:

1. The City shall notify all workers within the Union's bargaining units whom it intends to recommend for termination because the City has received from its Medical Director a medical determination on the basis of which it has deemed the worker unable to perform the duties of the worker's job classification. Furthermore, the worker will be advised of their right to file for and potentially qualify to receive benefits from the Employees' Retirement System of the City of Baltimore. That notice (which the parties shall refer to as the "medical notice") shall be given at least forty-five calendar days before a pre-termination meeting is conducted.

2. The City shall address and send by certified mail to the worker c/o of the worker's last known home address, a letter constituting the medical notice that informs the worker that the City and its Medical

Director have determined that the worker has a medical condition that permanently prevents the worker from further performance of the essential duties of the worker's Civil Service job classification. The City shall also advise the worker in that mailing how to seek alternative employment within the City's Civil Service for which the worker may qualify for, fill and perform. The letter shall confirm that no light duty or restricted duty positions are available on a permanent basis. The letter also shall clearly advise the worker of their possible eligibility for retirement benefits from the Employees' Retirement System of Baltimore City, including a contact number for an appointment with a Retirement Benefits Analyst. Said correspondence will be copied to ERS, and to the Union c/o its Bush Street office.

3. Within one week after the medical notice is mailed to the worker, the worker's appointing authority, or the appointing authority's human resources manager, will contact the worker to schedule and conduct an in-person meeting, which meeting shall include the worker, and a Union representative, when desired by the worker. The parties shall meet to review and discuss the medical notice, and advise the worker who to contact to begin and complete an application for disability benefits with the Employees' Retirement System of Baltimore City. The City shall grant the Union paid release time to assign Union representation to the meeting, if the employee desires. One issue that is to be discussed and reviewed at the meeting, at the request of the Union and/or the worker, is whether, consistent with the Americans with Disabilities Act (ADA) and/or City PM-171, the worker may initiate an ADA analysis.

4. If, but only if, within forty-five days after the date of a medical notice, a worker who is issued a medical notice has obtained and presents to the City or its Medical Director a written evaluation containing a medical opinion from a physician that he/she is capable of performing the essential functions of his/her job classification, a worker who is issued a medical notice shall be given the opportunity to contest the determination of the City and of its Medical Director that the worker has a medical condition that permanently prevents the worker from further performance of the duties of the worker's Civil Service job classification.

5. If a worker elects to contest the medical determination then the worker acting through the Union may demand an independent review by a different Board Certified physician, chosen by the Union, the City's Medical Director and the worker, by furnishing a written demand therefore to the Office of the Labor Commissioner and to the AFSCME Union. Said notice shall be received by the

Office of the Labor Commissioner within forty-five (45) days of the date of the medical notice.

6. If an independent review is requested, the independent review shall be conducted by a physician who is chosen upon agreement between the worker, the City's Medical Director and the AFSCME Union. Should the worker, the Medical Director and the AFSCME Union be unable to agree within seven (7) calendar days of the written demand referenced in paragraph five (5), then the Board Certified physician shall be selected by the appropriate chief of faculty or department head in the appropriate specialty of the University of Maryland Hospital or Johns Hopkins Hospital. The function of the independent physician so selected shall be to opine whether or not the worker suffers from a mental, medical or physical disability that prevents the worker from further performance of the duties of the worker's Civil Service job classification, as the City through its Medical Director has determined. The opinion of the independent physician shall prevail, and it shall be the final and binding determination as between the Union, the City and the worker. Cost of the independent medical review will be split evenly between the employee and employer (i.e., the worker and the City) if the independent physician sustains the opinion of the City's Medical Director, but the cost of the independent medical review shall be paid, in full, by the City if the independent physician sustains the worker's position that he/she is capable of performing the essential functions of his/her job classification.

7. The worker shall authorize release of opinion of the independent physician to the Union, the City and the City's Medical Director, by means consistent with HIPPA. In cases where the independent physician deems the worker fit to perform the duties of the worker's Civil Service job classification, the worker will be allowed to resume work in the job classification for which they were hired or assigned alternative duties without reduction in pay or benefits, based on the determination of the Medical Director, in consultation with the Agency Head or their representative.

8. If a worker is (1) unsuccessful in their independent medical review or (2) elects in writing not to contest the Medical Director's determination or (3) fails to present a medical opinion as described in paragraph 4 and the worker files and completes an application with the Employees' Retirement System of Baltimore City within forty-five days of the date of the medical notice or completion of the medical review, whichever date is later, the City shall continue to retain the worker in pay status, without deduction of pay or

discontinuation of benefits, until such time as the Trustees of the Employees' Retirement System of Baltimore issue a final hearing examiner's decision on the worker's application for retirement benefits provided a complete application is filed and not withdrawn. On the next business day following the date on which the final administrative decision is issued by the Trustees of the Employees' Retirement System of Baltimore, the worker shall be deemed to have voluntarily resigned from City employment, provided, however, that benefits are authorized. Should benefits not be granted through the final administrative decision of the Trustees of the Employees' Retirement System, and the worker has acted in good faith to obtain a pension benefit throughout the application/hearing process, the worker will be allowed to resume work in the job classification for which they were hired or assigned alternative duties without reduction in pay or benefits, based on the determination of the Medical Director in consultation with the Agency Head or their representative. A worker who completes a written statement of "no contest" shall be required to waive his/her rights to contest termination under Article VII, § 100 of the Baltimore City Charter and under local, federal and state disability laws. A worker shall not be requested to and, in fact, he/she shall not waive any rights or remedies under the Maryland Workers' Compensation Act.

9. The City Administration will introduce, sponsor and actively lobby in support of legislation to the City Council which will enable any former worker within the Union's bargaining units who between January 1, 2004 and the date on which this agreement takes effect, who on account of a medical determination has been terminated, or who has been given notice by the City of termination, including, but not limited to a final decision issued by or in the name of the Civil Service Commission, but contested such termination through due process proceedings that are available to workers employed in the City's Civil Service, to apply for pension benefits from the Employees' Retirement System of the City of Baltimore; the result or finality of any prior administrative and/or judicial proceedings notwithstanding. This right to subsequent review shall remain in effect for a period of not less than one year after it is enacted and becomes the law of the City.

10. Within thirty days after the legislation that is contemplated in ¶ 9 of this Diversion Agreement is enacted, the City shall address and mail a follow-up medical notice to the former worker c/o of the former worker's last known home address, a letter that informs the worker that the City and its Medical Director have determined that the former worker as of the date of termination had a medical

condition that permanently prevents the former worker from further performance of the duties of the worker's Civil Service job classification. The City shall also advise in the letter that as of the date of termination there were no vacant positions within the City's Civil Service which the former worker applied and qualified for, and that there are and shall be no light duty or restricted duty positions available on a permanent basis; and it shall also affirm that there were not accommodations due to the employee under the Americans with Disabilities Act. The letter also shall clearly advise the former worker how to contact the Employees' Retirement System of Baltimore City, including a contact number to reach a Retirement Benefits Analyst.

11. Should a worker who has been provided medical notice fail to contest the medical determination as described in paragraphs 4 and 5 or fail to file for a pension benefit as described in paragraph 8, the worker's employment will be terminated.

Mayor and City Council of Baltimore

By: _____
Labor Commissioner

Maryland Public Employees Council 67 a/w AFSCME for itself and its Affiliated AFSCME Locals 44, 558 and 2202

By: _____
Executive Director

Approved as to form and sufficiency:

_____
~~Assistant~~ City Solicitor

Board of Estimates:
Noted:

_____
FEB 1 6 2005