

MEMORANDUM OF UNDERSTANDING TYPE A

**AGREEMENT BETWEEN THE BOSTON PUBLIC SCHOOLS, AND THE
EDWARD M. KENNEDY ACADEMY FOR HEALTH CAREERS
A HORACE MANN CHARTER SCHOOL**

AGREEMENT by and between the Edward M. Kennedy Academy for Health Careers (“EMK”), a Horace Mann Charter Public School, by and through its Board of Trustees (the “Board”), and the School Committee of the City of Boston, by and through its Public School Department (the “BPS”). In consideration of the mutual covenants contained herein, EMK and BPS agree as follows:

WHEREAS, Massachusetts General Law Chapter 71, §89 gives the Commonwealth of Massachusetts, Department of Education (“Massachusetts DESE”), the power to approve the operation of a public school under a charter (hereinafter, “Horace Mann Charter School”), to stimulate the development of innovative programs within public education, to provide opportunities for innovative learning and assessments, to encourage performance-based educational programs, and for other valuable educational purposes; and

WHEREAS, the Massachusetts DESE promulgated standards and procedures for the operation of Horace Mann Charter Schools under 603 CMR §1.00 *et seq.*; and

WHEREAS, in February 2018, the charter for EMK was renewed unanimously for a period of five years following submission of a renewal application approved by the EMK Board of Trustees, the Boston School Committee and the Boston Teacher’s Union; and

WHEREAS, the parties are desirous of delineating their respective rights and responsibilities to the extent not fully described by the laws of Massachusetts, and to comply with said standards and procedures;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Operation as a Horace Mann Charter School.
 - a. BPS agrees to permit and enable EMK to operate as a Horace Mann Charter School in accordance with: (1) M.G.L. c. 71, §89, and the regulations promulgated in connection therewith; and (2) the terms of the Application as it may be amended from time to time.

2. EMK’s Annual Budget.
 - a. BPS agrees to provide a Lump Sum Budget to EMK on an annual basis in accordance with M.G.L. c. 71, §89 and the regulations promulgated in connection therewith for the term of this Agreement and so long as EMK continues to operate as a Horace Mann Charter School.

- b. This Lump Sum Budget shall be calculated based on the weighted student funding model adopted by Boston Public Schools and applied to future-year projected enrollment of EMK. An adjustment, based on the same formula used at other Boston Public Schools, may be made to this budget by November 15 of each year to reflect actual enrollment at the school. EMK will use actual and/or average salaries of employees in creating and managing its budget from BPS.
- c. EMK will have the opportunity to purchase discretionary central support services from the district. In those instances, where EMK chooses not to purchase a discretionary central support service, BPS will add the equivalent per-pupil cost of the service to EMK's budget. Additionally, BPS will provide non-discretionary services including but not limited to: transportation - M7 student transportation passes for all EMK students, transportation for athletics, employee benefits, facilities, payroll, safety, food service, and other central office services) as in-kind support. BPS and EMK will meet each spring to review the type and extent of "non-discretionary" services to be provided by BPS during the following school year.
- d. The Lump Sum Budget shall not be reduced because of the school's receipt of additional funds from sources independent of the BPS. EMK agrees to operate within its Lump Sum Budget plus any other funds that EMK may receive independent of the BPS, less services purchased from BPS.
- e. Each fiscal year EMK, in accordance with the provisions of M.G.L. c. 71, §89 and the regulations promulgated in connection therewith, shall adopt an annual operating budget for EMK, which shall allot funds from the Lump Sum Budget to EMK's educational mission as EMK deems appropriate. In accordance with the requirements of all Boston Public Schools, EMK shall deliver its plan for how it intends to use its Lump Sum Budget to the Chief Financial Officer of the BPS (the "CFO") in such form and time frame as s/he may reasonably specify, with a copy to the Boston School Committee, in no case later than February 1.
- f. EMK shall provide notice to the CFO of amendments and modifications to its budget as needed, in accordance with BPS policies, during the year; however, any failure by EMK to provide notice of amendments or modifications to its budget will not limit its budgetary authority under M.G.L. c. 71, §89. EMK will be responsible for compliance with the laws and regulations requiring an annual independent financial audit of the school. If requested, EMK shall provide the CFO with copies of EMK's annual financial audit, EMK's budget and any amendments and modifications thereto, and any financial reports that EMK submits to the Massachusetts DESE. The CFO may also request, and EMK shall provide in response to any such request, additional documentation to support EMK's annual operating budget or any amendments or modifications to its budget. Any budget disagreements shall be resolved through negotiation between the CFO and the EMK Headmaster or Chair of the Board. In the event that no resolution is reached, either party may appeal to the BPS Superintendent for a final determination. In all instances, any disputes must be resolved through negotiation or appeal by February 1.

- g. EMK is an independent local education agency (LEA). As such, EMK will be responsible for applying for and accounting for any separate state or federal grants, including, but not limited to, Title I, Title II A, IDEA, and school improvement grants. BPS will be responsible for applying for reimbursements for national school nutrition programs.

3. Operating Account and Expenditures.

- a. By July 1 of each year, the CFO shall establish an operating account for EMK in the amount of the Lump Sum Budget (the "EMK Operating Account"). Only EMK's Headmaster or his/her designee(s) shall authorize expenditures from its operating account.
- b. EMK shall establish and maintain a separate bank account under its exclusive control (hereinafter, the "EMK Bank Account"). BPS agrees to transfer any funds not allocated or budgeted for salaries or stipends at least two times a year, with the first transfer coming no later than September 1 from the EMK Operating Account to the EMK Bank Account. The first transfer will be based upon the difference between the total Lump Sum Budget provided by BPS to EMK Academy and an estimate of the amount of funds EMK Academy anticipates spending on stipends and salaries. The amount of this transfer will be mutually agreed upon by the CFO of BPS and the Headmaster at EMK Academy. The second transfer will occur by January 31 and will only be necessary if there is an increase in the difference between the total Lump Sum Budget provided by BPS to EMK Academy and the estimated amount of funds EMK Academy anticipates spending on stipends and salaries. For example, the transfer in January will be necessary if EMK Academy receives more in its BPS Lump Sum Budget after accounting for actual enrollment at EMK Academy, per the process described above. The third transfer may occur after the end of the fiscal year. After the CFO performs a year-end reconciliation at the close of the BPS's fiscal year, any remaining funds from EMK's Operating Account will be transferred to the EMK Bank Account. Expenditures from the EMK Bank Account shall be made in accordance with all applicable laws, ordinances, and regulations.
- c. EMK shall have the option to purchase non-instructional goods and services as EMK shall from time to time determine, including, but not limited to, technology, professional development, and athletics, at costs reasonably determined by BPS. For all such non-instructional goods and services purchased, EMK may request, and the BPS shall provide in response to such request, an annual report detailing the scope of goods and services provided and the cost of such non-instructional goods and services purchased. In addition, EMK shall have the option to purchase additional, non-instructional goods and services as EMK shall from time to time determine.
- d. EMK agrees that it shall be responsible for all costs associated with the operation of EMK. EMK further agrees it shall indemnify and hold harmless BPS, its officers, agents or employees from all claims resulting from any costs incurred by EMK, its Board, officers, agents or employees in association with the operation of EMK.

4. Facilities.

- a. BPS and EMK acknowledge that they share responsibility for securing an adequate facility for the Horace Mann School. BPS will provide and maintain an adequate facility for EMK, or, consistent with charter school law and regulations (603 CMR 1.08) and the MADESE Horace Mann Charter School Technical Advisory 03-1 – Paragraph 14), will provide EMK with the funds to pay for a facility, including the equivalent costs associated with utilities, facilities maintenance, staff parking, and custodial staff salaries that BPS would have provided to EMK Academy were it to be in a BPS facility. This includes provision for a facility adequate to meet the physical education requirements of state law.
- b. Subject to BPS's aforementioned agreement to provide EMK with funds to pay for a facility, in the case that EMK operates in a non BPS-owned facility, EMK agrees it shall ensure that the site and facilities for the school comply with all federal, state, and local laws, regulations, and codes and shall be responsible for all costs associated therewith. Subject to BPS's aforementioned agreement to provide EMK with funds to pay for a facility, in the case that EMK operates in a non BPS-owned facility, EMK also agrees to be responsible for payment of all lease or mortgage obligations on the site and facilities for the school, utility charges, and any and all other costs associated with the operation of the site and facilities. In the case that EMK operates in a non BPS-owned facility, any purchase or lease agreement relating to the site or facilities for EMK, including any renewals, must be submitted to BPS for review and for approval by the Boston School Committee and Superintendent of Schools prior to execution by EMK, which shall not be unreasonably withheld or delayed.
- c. If EMK is located in a BPS-owned facility, BPS shall ensure that the site and facilities for the school comply with all federal, state, and local laws, regulations, and codes and shall be responsible for all costs associated therewith, including utility charges, and will be responsible for performing building maintenance, and promptly support any capital repairs requested by EMK. BPS has processes in place to prioritize maintenance and capital requests from BPS schools. Facilities work requests from EMK would be considered promptly and prioritized according to need, using the same criteria as with any other BPS-owned facility. EMK and BPS will agree to a reasonable timeline for all EMK Academy facilities improvements and BPS shall provide these improvements within that timeline. BPS will consult EMK and its Board before a decision is made to move another school or school program into or out of EMK's facility and before considering moving EMK to another facility.

5. Special Education and English Language Learners

- a. EMK will collaborate with BPS to manage and provide all aspects of service to English Language Learners (ELL) and special education students, including but not limited to: ensuring compliance with federal and state law and regulations; supervising all special education and ELL staff and service providers; coaching ELL and special education staff; overseeing the MA DESE's Coordinated Program Review; facilitating IEP meetings; maintaining special education and ELL folders; collecting and maintaining special education and ELL student-related data; scheduling IEP meetings; delivering academic services to ELL students and students with

disabilities; developing and maintaining IEPs; administering academic testing; case managing; providing support to SPED, ELL and General Education Teachers by conducting small group instruction; providing behavioral support in the form of functional behavioral analyses and positive behavioral intervention plans; facilitating individual and group counseling sessions; facilitating Student Support Team (SST) meetings; conducting cognitive evaluations; providing speech and language therapy in group and individual settings; conducting speech-language testing; providing occupation therapy in group and individual settings; conducting occupational evaluations; providing physical therapy; conducting physical therapy evaluations; creating Adaptive Physical Education program, and providing adapted physical education services.

- b. EMK will be responsible for all hiring, managing, and evaluating BTU staff required to meet the needs of students who are English Language Learners and/or students requiring special education services. All ELL and special education staffing decisions will be at EMK's discretion, and will fulfill all services required in student IEPs.
- c. In the event that a student's IEP team determines that a student with disabilities attending EMK may need placement at a non-BPS school, BPS responsibility for the cost of such placement shall be governed by relevant state special education regulations, as is the case with any charter school. However, if an EMK student may require an out-of-district placement, EMK shall conclude any IEP meeting(s) without identifying a specific placement type, shall notify BPS within two school days and shall invite a representative of the BPS special education department to participate in any relevant placement meetings. EMK agrees that any out-of-district placement decision may not be finalized without the approval of the BPS special education representative.

6. Staffing.

- a. *Selection and hiring.* EMK has the sole discretion to select the staff for any and all positions at the school. EMK may formulate job descriptions, duties and responsibilities for any and all positions in its school. EMK will be responsible for ensuring that any hiring complies with any licensure requirements.
EMK shall be exempt from BTU local collective bargaining agreements and past practices except that staff at EMK shall continue to be members of the local collective bargaining unit and shall accrue seniority and shall receive, at a minimum, the salary and benefits established in the BTU contract. The selection of staff members shall be in compliance with the applicable federal and state laws and municipal ordinances. EMK acknowledges that the diversity of its staff contributes to overall BPS staff diversity statistics, some of which are subject to court-mandated rules. As an individual school, EMK will hold internal staff diversity goals in line with court mandated percentages. EMK will annually submit its diversity recruitment plan and goals to BPS and will take all reasonable actions to cultivate teachers of color and meet or exceed court mandated diversity goals. If EMK teaching staff demographics do not meet or exceed court mandated diversity goals, EMK will work with BPS to revise the diversity recruitment plan.

Staff will be paid at least as much as the BPS salary scale dictates, but EMK has the right to compensate staff members above the salary scale and is not required to adhere to BPS

or union salary steps / lanes. All salaries outside of the established salary grades and steps must be discussed with the Office of Human Capital and Chief Financial Officer prior to offer. If an EMK employee is compensated above the standard salary scale, the employee would revert to the contractual salary scale based on experience and academic credentials if that employee leaves EMK Academy for another position within the district.

- b. *Management and evaluation.* EMK, through its board of trustees, shall manage its staff, including issues regarding discipline. Although EMK will have sole discretion in managing and disciplining of their staff, subject to state and federal laws. EMK shall notify BPS' Office of Labor Relations of any discipline that rises beyond a warning. All members of the EMK staff shall execute an election to work agreement containing the working conditions every year. EMK will adopt the Educator Evaluation system adopted by BPS across all job categories.
- c. *Excessing and dismissal.* EMK may involuntarily excess members of the BTU by providing notice of any involuntary excessing by February 1st. Excessing must be consistent with the provisions of the BTU collective bargaining agreement. EMK agrees that the dismissal of all staff members shall be done in accordance with federal and state law, municipal ordinances and applicable collective bargaining and election to work agreements.
- d. *Processing and notification regarding staff.* BPS agrees that any and all hiring and dismissals of staff for EMK will be processed in a timely manner through the BPS Office of Human Capital. EMK shall provide the BPS Office of Human Capital with timely notification of any staffing changes for the subsequent school year. Such notification shall be in writing and shall be made to BPS in a timely manner.
- e. *Working Conditions.* The provisions of the BTU collective bargaining shall not apply to BTU employees at EMK except that members of the BTU will receive, at a minimum, the salary and benefits outlined in the BTU collective bargaining agreement. Among other changes to BTU working conditions, EMK intends to operate a longer school day and year than the standard BPS school schedule. Each employee at EMK will sign an Election to Work Agreement prior to the beginning of each school year. The Election to Work document will detail the working conditions for that employee's position, including but not limited to expected hours per day and number of days per year. EMK will ensure that the Election to Work Agreement for each employee will be submitted to OHC for inclusion in each employee's file.

7. Compliance with Law.

- a. EMK agrees to comply with all applicable federal, state, and municipal laws, rules, regulations, and codes, including, but not limited to: the provisions of the Uniform Procurement Act, M.G.L. c. 30B; M.G.L. c. 71, §89 and 603 CMR §1.00 *et seq.*; M.G.L. c. 71; those relating to diversity of students, teachers and other staff; the protection of the rights and interests of students and staff; the expenditure of public funds; and education reform. The Horace Mann School also agrees to comply with the civil rights policies of the BPS. Students who have special needs or are English language learners will be

appropriately identified, assessed, and served in accordance with federal and state requirements. Without limiting the foregoing, EMK agrees that it shall, in carrying out its responsibilities under this Agreement, comply with every provision of M.G.L. c. 268A (the Conflict of Interest Law) to the full extent of the applicability of said provisions. Failure to comply with all applicable legal requirements may result in termination of this Agreement pursuant to section 16, herein.

- b. EMK agrees that all employment decisions will be made in compliance with the applicable federal and state laws. EMK, as a part of the Boston Public Schools, acknowledges and supports the district's goals to employ a workforce that represents the diversity of our student population, and will seek to employ a diverse workforce.

8. Governance Structure.

- a. EMK acknowledges that it has formed, and will hereafter maintain, a Board of Trustees, the governing body established in its by-laws. The Board of Trustees shall ensure compliance with all laws, regulations, and codes.
- b. EMK shall be operated and managed by its Board of Trustees independent of the Boston School Committee.

9. Hiring, Evaluation and Dismissal of Building Administrator(s).

The Board shall select and hire the Headmaster and set the salary for the Headmaster, subject to the approval of the Superintendent. The Superintendent shall not unreasonably withhold his/her approval of either the Headmaster or the salary set for the Headmaster by the Board. The Board shall evaluate the Headmaster and will submit its recommendations regarding the Headmaster to the Superintendent in the form of an evaluation, in accordance with all relevant state regulations. The parties to this Agreement acknowledge that only the Superintendent may dismiss the Headmaster. Any dismissal of the Headmaster, however, shall be based upon a recommendation submitted by the EMK Board of Trustees to the Superintendent.

10. Program Coordination with BPS.

- a. *Operations.* EMK and the BPS shall coordinate in the development of operational guidelines relating to EMK's staffing (including, among others, adherence to civil service requirements and fair labor practices); budgeting (including, among others, timely submission of annual operating budget in order for it to be approved at same time that BPS budget is approved by School Committee); student assignment; facilities; equity; transportation; and business purchasing, and such other operational guidelines and policies as reasonably determined by the parties. Such coordination shall be conducted on an on-going basis, as reasonably determined by the parties.

- b. *Transportation and School Schedule.* BPS will provide transportation in accordance with M.G.L. c. 71, §89(cc). EMK and BPS will meet by April 1 of each year to plan school starting and ending times in order to assist the district with identifying effective means of transportation, including late buses, reimbursement for public transportation, additional buses, additional bus routes, or other forms of transportation, as requested by EMK. BPS will accommodate EMK's particular school day and school year.
- c. *Student Discipline.* EMK certifies and acknowledges that it has read and reviewed the BPS's Code of Conduct. EMK shall adopt and will comply with BPS's Code of Conduct. Any such policies shall be developed in full compliance with federal and state laws and regulations, including but not limited to M.G.L. c. 71, §§37H and 37H1/2. In addition, any policies pertaining to student conduct shall contain clear language regarding due process and steps necessary to ensure same. EMK agrees to submit to BPS a final and approved copy of their policies regarding student conduct prior to the start of each school year. BPS and EMK will develop a process to ensure that students expelled from EMK will be re-enrolled into BPS in a manner that is aligned with how BPS re-enrolls students expelled from other BPS schools.

11. Student Enrollment, Recruitment and Retention.

- a. Students will be enrolled in EMK in accordance with the provisions of M.G.L. c. 71, §89(l), (m), and (n). Students who withdraw from EMK may enroll in another school within BPS in accordance with the provisions of M.G.L. c. 71, §89(p). If a student stops attending EMK for any reason, EMK shall fill the vacancy in accordance with the provisions of M.G.L. c. 71, §89(n).
- b. EMK will be included in all major BPS student recruiting materials and events, including but not limited to the annual Showcase of Schools, on an equivalent basis as any other BPS school. Pursuant to M.G.L. c. 71, §89(g), BPS will provide EMK or a third-party mailhouse with student contact information and basic demographic data for use in student recruitment efforts, provided that EMK agrees to keep this information confidential. EMK will submit to BPS annually the recruitment and retention plan that it develops for the DESE.
- c. EMK will integrate its enrollment process with that of BPS. EMK will provide copies of its student enrollment application to BPS, and BPS will make said application available at all Welcome Centers and on the BPS website. In addition, EMK may distribute its student enrollment application at other locations and through other means. BPS will ensure that families at the Welcome Center are able to indicate their intent to apply to EMK, and BPS will convey this information to EMK in a timely manner. EMK will adhere to its own transfer and vacancy back filling policy. However, EMK will work with the BPS Enrollment Planning and Support department to develop a transfer policy that aligns to the extent possible with BPS's transfer policy. In addition, BPS will honor EMK's decisions regarding retention and promotion of students, as it does for any other BPS school.

12. Information Requirements.

- a. EMK agrees to submit forthwith any information or data relative to its operation and functioning, as reasonably requested and required by the BPS. EMK agrees to utilize the BPS Student Information System to report attendance, discipline, school schedule, and grades, and to update this information promptly. EMK agrees to utilize the family portal as well through the BPS Student Information System.
- b. EMK agrees to have the option to implement all district-wide assessments that BPS requires of other schools serving the same grade levels. EMK shall consult with BPS while developing the Accountability Plan that is required by the DESE, to ensure that EMK establishes performance goals that are aligned with BPS expectations. By August 1 of 2018 and each subsequent year, EMK shall submit to BPS a copy of the Annual Report and Accountability Plan required by the DESE.
- d. EMK will be responsible for submission of required data submissions to MA DESE, including SIMS, SCS, and EPIMS. BPS will collaborate with EMK to provide the data from the student information and human resource systems that may be needed to facilitate these submissions.
- e. The School Committee shall develop a plan to disseminate innovative practices of EMK to other public schools within the district subject to the legally enforceable provisions of any contract between EMK and any third party provider. EMK agrees to cooperate with BPS and the Boston School Committee in connection with the development of the plan for innovative practices. The innovative practices plan and assessment plan shall be available for review by the Superintendent or his/her designee upon request.

13. Assignment.

This Agreement may not be assigned without the prior written consent of the Superintendent or his/her designee.

14. Term of Agreement.

The term of this Agreement is the period from the date of execution of this Agreement through June 30, 2023. No later than six (6) months prior to the expiration of the term of this Agreement, or the expiration of EMK's charter, whichever occurs first, BPS and EMK shall meet and make a good faith effort to discuss and plan for the continuation of this Agreement, and the continued operation of EMK in accordance with the Application and the Renewal, with such modifications as to which all parties agree, the Boston School Committee approve, and the Massachusetts DESE grants.

15. Indemnification.

It is expressly understood by and between the parties hereto that EMK is a unit of the Boston Public School Department only to the extent consistent with the law, including the provisions of M.G.L. c. 71, §89 and regulations promulgated in connection therewith. The parties expressly acknowledge that EMK is an entity independent of the Boston Public School Department and that Boston Public School Department shall not be liable for the acts or omissions of EMK, the Board, its officers, agents or employees except to the extent consistent with the law, including the provisions of M.G.L. c. 71, §89 and regulations promulgated in connection therewith.

16. Termination.

EMK acknowledges that the Superintendent is responsible for the education of all BPS students. In the event the Superintendent determines in his/her professional judgment that EMK is not serving the best interest of the students of the BPS, and/or that EMK is not complying with the requirements of section 6 above, s/he shall have the right to invoke the complaint procedures set forth in 603 CMR 1.09 *et seq.*, and/or present facts to the Commissioner of Education in connection with a request for review and investigation of EMK. In addition, this Agreement terminates automatically in the event that the Commissioner of Education revokes the charter of EMK for any reason. In the event that this Agreement is terminated, BPS agrees to reimburse EMK for appropriate EMK expenses that it incurred prior to such termination.

17. Horace Mann School's Rights of Appeal.

BPS acknowledges that EMK has the right to file an appeal with the Massachusetts DESE, in accordance with the procedures set forth in 603 CMR 1.09 *et seq.*, if EMK determines in its professional judgment that the BPS is not complying with the requirements of this Agreement or the provisions of M.G.L. c. 71, §89. EMK agrees that it shall not file any such appeal with the Massachusetts DESE without first giving BPS at least fourteen (14) days written notice of EMK's intent to file such an appeal and the grounds upon which any such appeal would be based.

18. Notices.

All notices, requests, and other communications given to or made upon the parties hereto, except as otherwise specified herein, shall be in writing and shall be delivered or mailed, postage prepaid, to such party at:

- (A) In the case of the BPS:
Superintendent
Boston Public Schools

2300 Washington Street
Roxbury, MA 02119

With a copy to:

Office of Legal Advisor
Boston Public Schools
2300 Washington Street
Roxbury, MA 02119

- (B) In the case of EMK:
Elmer Freeman
Chair of Board of Trustees
Edward M. Kennedy Academy for Health Careers
360 Huntington Avenue – 102 CA
Boston, MA 02115

Any party may, by written notice to the other party, designate another address. Any notice, request, or demand shall be deemed to have been given when it is actually received by the party to whom it is addressed.

19. Counterparts.

This Agreement may be executed in any number of counterparts, each such counterpart shall be deemed to be an original instrument, and all counterparts together shall constitute but one agreement.

20. Severability.

If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement, which can be given effect without the invalid provisions or applications, and to this end the provisions of this Agreement are declared to be severable.

21. Amendments.

This Agreement, or any part thereof, may be amended from time to time hereinafter only by writing executed by both the BPS and EMK.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal.

BOSTON PUBLIC SCHOOLS

By: _____ Date: _____
Laura Perille, Interim Superintendent

APPROVED AS TO FORM:

By _____
Eugene O'Flaherty,
Corporation Counsel

Edward M. Kennedy Academy for Health Careers

By: _____ Date: _____
Name: Elmer Freeman
Chairperson of the Board of Trustees