

FACILITY SHARED USE AGREEMENT BETWEEN
Girls Preparatory Academy Charter School
AND THE
NEW YORK CITY DEPARTMENT OF EDUCATION
June 1, 2005

This Agreement made between the Department of Education of the City of New York (the "Department"), with offices located at 52 Chambers Street, New York, New York 10007, and **Girls Preparatory Academy**, an independent and autonomous public school under the New York Charter Schools Act of 1998 (the "Charter School" or "School"),

WHEREAS, the Charter School will be located at **333 East 4 Street New York, NY 10009** and housed within **PS 15**, a New York City public school (the "Public School"); and

WHEREAS, the purpose of this Facility Shared Use Agreement is to set forth the specific terms as to the use of the space designated for the Charter School in the Public School building (the "Building"); and

NOW, THEREFORE, the Department and the Charter School in consideration of the mutual covenants, representations, and agreements contained herein, hereby agree as follows:

Article 1. Term and Premises

- 1.1 This Agreement shall commence on **July 1, 2005** (hereinafter the "Commencement Date") and terminate five years from the Commencement Date or upon the expiration or termination of the Charter School's charter or upon expiration or termination of the lease in the event that the Charter School is located in a leased premises, whichever is earlier or as provided herein. This Agreement may be terminated earlier pursuant to the terms of this Agreement or extended by a written Agreement signed by the parties.
- 1.2 Pursuant to this Agreement, the Charter School is authorized to use Dedicated and Shared Space as defined in Article 2 and Attachment A.

Article 2. Dedicated and Shared Space

- 2.1 The Department hereby grants to the Charter School use of the "Dedicated Space" as detailed in Attachment A solely for the purposes set forth in the School's Charter between the **New York City Department of Education**, the Charter School's authorizer, and the Charter School and on the terms and conditions set forth herein. On an annual basis, the Charter School may request

to renegotiate the Dedicated Space with the Department to accommodate changes in the School's enrollment.

- 2.2 During the term of this Agreement, the rooms and facilities listed as Dedicated Space in Attachment A are designated for use by the Charter School. Notwithstanding anything to the contrary contained herein, the Chancellor reserves the right to relocate the Charter School to an alternate location geographically proximate to the location of the School, as defined in this Agreement, (the "Alternate Location") if he/she determines that the space being used by the Charter School is required for use by a Department public school. Any such Alternate Location will be provided to the Charter School under the cost structure detailed in Articles 5 and 6 of this Agreement. Prior to relocation the Chancellor shall consult with the Charter School as to the possibility of relocation and take under advisement any preferred alternative locations. The Chancellor shall certify in writing that in his/her judgment the need of the school system requires the re-acquisition of the Charter School space for Department use and that no other feasible space is available to meet the educational needs of the school system and that he/she has consulted with the Charter School. Every reasonable effort will be made to relocate the Charter School as close to the original location as practical. The Department will provide written notice of this change to the Charter School by December 1st prior to the academic year in which such changes shall take effect. The Department shall at its expense move the Charter School furniture, equipment, and school materials if the Charter School is relocated to alternate public school space pursuant to this paragraph.
- 2.3 Prior to the start of each academic semester, the principals of the Charter School and the Public School shall meet to discuss shared use of the gym, auditorium, specialized classrooms, cafeteria and other shared facilities located at the Public School ("Shared Space"). Shared Space for the purposes of this Agreement shall include but not be limited to the spaces listed as Shared Space on Attachment A. The principals of all schools located within the Building shall cooperatively decide how to use Shared Space in a manner that is not to the exclusive benefit or detriment of one school. If any dispute related to use of the Shared Space arises that cannot be resolved among the Charter School Principal and the Principal of the Public School, any of the principals may seek the involvement of the Office of New Schools or Chancellor's designee and the Regional Superintendent's Office (the "Regional Superintendent") to aid in the resolution of such dispute. The use of the Shared Space for the first academic semester of this Agreement is set forth on Attachment A. [Until such time as the principals determine a schedule for use of the Shared Space, the schedule for the prior semester shall govern].
- 2.4 Subject to the terms of this Agreement, including Articles 5 and 6, the Charter School shall be responsible for any costs and/or liabilities that may arise from use of the Dedicated Space and Shared Space, including, without limitation, costs associated with keeping the Building open beyond Regular Opening Hours,

currently 7:00am to 6:00pm Monday through Friday on all days that Department public schools are in session. The Charter School acknowledges that opening hours beyond the actual school day session are subject to the availability of funds and any changes in the Department's collective bargaining Agreements and may change from time to time. Notice of any such change will be provided in the same manner as notice is given to the Public School.

- 2.5 The Principal of the Charter School shall have access to the building in the same manner that the Principal of the Public School is granted access, and shall coordinate with the Building custodial staff for such access. However, if no permit is requested and the building is closed, no HVAC will ordinarily be available. The right to have access to the building during non-regular opening hours is restricted to the Principal and administrative staff may be granted access when the Principal is present. For liability and security reasons, when parents, students or teachers are present after non-regular opening hours, a permit is required to ensure the security of the building.
- 2.6 In order to use the Premises, defined as Dedicated or Shared Space, during times other than Regular Opening Hours, the Charter School shall request permits for extended-day use and for other activities. In the event that the Charter School conducts an extended timetable and extra-curricular programs, the Charter School may request a continuing permit lasting a full academic year (July 1 to June 30 of the following calendar year) up to two semesters in advance for ongoing extended-day and weekend programs. It is understood that the Charter School shall apply for the permit with the custodian, and after processing by the custodian, the permit application will be submitted to the Regional Operations Center (the "ROC") for approval with a courtesy copy of the permit application being sent to the Principal of the Public School. The Department will provide security services for extended-day programs and other Charter School events at the Charter School's expense. Prior to submission of a permit application to the custodian, all annual or semester length permits must be discussed with the respective Charter and Public School principals to ensure equitable and adequate access to the school premises during non school hours by the respective schools. (It is not the intention of this paragraph to enshrine a first come first serve approval process between the two schools).
- 2.7 No outside entity may use the Dedicated Space without first submitting a permit request to the Charter School Principal. Upon review by the Charter School Principal, such entity's request to use the Dedicated Space after school hours shall be submitted, together with any comments or recommendations from the Charter School Principal to the Custodian for processing with a copy to the Principal of the Public School. Upon processing by the Custodian, the permit request will be forwarded to the ROC. The final approval of all such permits shall be made by the ROC. The entity shall be responsible for paying the required permit fee. The Charter School shall not allow any entity or person to use the Premises without an approved permit. All permit requests must be forwarded to

the ROC at least one month in advance of said event, unless this requirement is waived by the ROC. No permit is required for Charter School's contract vendors providing academic and educational services to the Charter School.

- 2.8 The Chancellor or his designee may authorize the use of the Dedicated Space when not in use by the Charter School provided that such use shall not otherwise interfere in any way with the Charter School's normal use of the space. Except in an emergency, the Chancellor shall give the Charter School a minimum of two (2) weeks notice of his/her desire to utilize the space. The Charter School shall not be responsible for any costs and/or liabilities that may arise from such use, including, without limitation, costs associated with keeping the Building open beyond Regular Opening Hours.

Article 3. Termination

- 3.1 This Agreement shall be terminated automatically upon the revocation or expiration of the Charter School's charter.
- 3.2 The Charter School may terminate this Agreement at any time, provided the Charter School gives the Department at least thirty (30) days prior written notice.
- 3.3 The Agreement may be terminated at the option of the Chancellor by December 1st of the academic year prior to the academic year in which such termination shall take effect for any of the following reasons: i., in the opinion of the Chancellor, the Charter School is not organizationally viable; ii., in the opinion of the Chancellor, the Charter School has mismanaged public funds; or iii., in the opinion of the Chancellor, the Charter School's academic performance does not meet the student goals and objectives established between the Charter School and its authorizer in the Charter School's accountability plan.
- 3.4 This Agreement may be terminated by the Chancellor upon a material breach of this Agreement by the Charter School. The Charter School shall be given written notice of the material breach and be granted 30 days to cure said breach. Material breaches involving the health and safety of the school must be cured immediately.
- 3.5 The Charter School shall discontinue use of the Dedicated Space upon the effective termination date of this Agreement.

Article 4. Vacating the Premises

- 4.1 Upon the expiration of the term or effective termination date of this Agreement, the Charter School shall vacate the Dedicated Space in good condition, subject to ordinary wear and tear.
- 4.2 All personal property of whatever kind or nature in the Dedicated Space that is owned, or paid for by the Charter School, shall remain the property of the Charter School, and upon vacating the Dedicated Space, the Charter School shall

remove such property at the Charter School's expense. Fixed personal property shall be removed at the request of the Chancellor or designee, and the Charter School shall restore the Dedicated Space to good condition, equivalent to the condition of the Dedicated Space at the commencement of the Charter School's use, subject to ordinary wear and tear.

- 4.3 All Department property must remain in the Dedicated Space; however, if that property shall have been damaged by fire or other casualty attributed to the Charter School, it shall be repaired or replaced at the Charter School's expense.

Article 5. User Fee

- 5.1 The Chancellor shall charge the Charter School a fee of One Dollar (\$1.00) per annum for use of the shared facility during the Regular Opening Hours. The Charter School shall be responsible to pay the costs for the use of the Dedicated Space as detailed in Article 6.

Article 6. Payment for Services

- 6.1 The Department will provide utilities, custodial services, maintenance services and school safety services ("Operating Services") to the building. Beyond the provisions of 6.2, there will be no additional cost charged to the Charter School for the provision of Operating Services to the building during Regular Opening Hours.
- 6.2 The Charter School will pay for overtime-related costs for services beyond those typically provided during Regular Opening Hours of the School Year as a result of the Charter School's use of the Building as detailed in Article 2.6. See *Addendum to Article 6.2 Payment for Services*.

Article 7. Uninhabitable Space

- 7.1 If construction on the Building or Premises renders any part of the Dedicated Space uninhabitable, the Department shall make reasonable efforts to find alternative space for the Charter School in another public school. The Department shall make reasonable efforts to provide notice to schools of construction consistent with the notification procedures for the Public School.
- 7.2 If the Dedicated Space becomes uninhabitable, in the best judgment of the New York City Department of Buildings, due to any unplanned event, the Department is not obligated to provide alternative space, and may cancel this Agreement if the Department determines that it will not rebuild or repair the space in a timely manner. However, the Department will use reasonable efforts to find the Charter School alternative space in another public school.

Article 8. Charter School Alterations

- 8.1 The Charter School agrees to accept the Dedicated Space and Shared Space on an "as is" basis.
- 8.2 The Charter School, at its sole cost and expense, may only make temporary and nonstructural decorative or cosmetic alterations to the Dedicated Space. If the Charter School wishes to make permanent, structural alterations to the Dedicated Space or Building, the Charter School shall notify and obtain the written consent of the Regional Operations Center or Chancellor's designee, shall provide plans and specifications for the proposed permanent, structural alterations to the Division of School Facilities, and obtain the Division of School Facilities' written consent prior to making any material alterations to the Dedicated Space. Such consent shall not be unreasonably withheld nor delayed beyond thirty (30) days of receipt of such request.

Article 9. Emergency

- 9.1 In an emergency, as determined by the Chancellor, the Department reserves the right to temporarily interrupt the Charter School's use of the Dedicated Space or any Building facilities or systems, and such interruption shall not be deemed a breach of this Agreement. The Department's Office of New Schools or Chancellor's designee shall make reasonable efforts to assist the Charter School in finding alternative and appropriate space in the event of such emergency.
- 9.2 The Charter School Principal shall immediately inform the Regional Operations Center or Chancellor's designee and the Building Principal of any health and/or safety emergency (hereinafter, "School Emergency"). Similarly, the Principal of the Public School will immediately notify the Charter School Principal of any School Emergency.
- 9.3 The Charter School shall immediately notify the Office of New Schools or Chancellor's designee of any serious incidents that take place in the Building where the police, fire department or the paramedics are involved. This includes but is not limited to incidents of physical or sexual abuse, bomb threats, weapons brought to school, and the possession or sale of narcotics. The Charter School shall fax to the Office of New Schools or Chancellor's designee an incident report related to such event as soon as practicable. Similarly, the Principal of the Public School will immediately notify the Charter School Principal of any serious incidents of such serious events taking place. All allegations of corporal punishment shall be reported to the Chancellor's designee. The Charter School shall cooperate in all investigations involving incidents or wrongdoings that occur on or near school property.

Article 10. Compliance with Laws and Regulations

- 10.1 The Charter School agrees to comply with all required approvals, laws, regulations, orders and requirements of federal, state and local governmental authorities having jurisdiction over the Building and its activities. (including

mandated child abuse reporting). The Charter School shall comply with all Chancellor's regulations and directives affecting schools that involve the health, safety or welfare of the school community.

- 10.2 The Charter School shall not permit any activity in or about the Dedicated Space that might impair the proper functioning of Building systems or threaten the exterior or structural elements of the Building.
- 10.3 No vending machine shall be installed without the express written approval of the Chancellor.
- 10.4 If a violation is issued against the Dedicated Space due to the Charter School's acts or omission by an agency of jurisdiction (e.g., the New York City Department of Buildings), the Charter School shall be responsible for paying the costs to cure said violation within thirty (30) days of issuance and pay all costs related thereto, included but limited to the cost for said violation. If the Charter School fails to cure said violation within thirty (30) days, the Department as agent to the Charter School may cure said violation and charge the Charter School for all costs related thereto and the Department is authorized to deduct the amount owed to the Department from the Charter School's general operating payment as part of the Department's annual financial reconciliation process for charter schools.
- 10.5 The naming of school buildings and all spaces therein shall remain the exclusive prerogative of the Chancellor.

Article 11. NCLB Transfers and Student Assessment

- 11.1 The Charter School will reserve ten percent (10%) of its available seats to students transferring from Department public schools through the Department's No Child Left Behind (NCLB) choice transfer program [[Ed.L. §2854(2)(a)]. By December 1st of each school year, the Charter school will notify the Department of the number of available seats. The Charter School will be notified by the Department by May 15th if no students will be transferred under this provision.

Article 12. Audit and Annual Report

- 12.1 As required by the New York State Charter Schools Act (the "Act"), the Charter School shall retain an independent certified public accountant or certified public accounting firm licensed in New York State to perform an audit of the Charter School's annual financial statements. The independent audit of the Charter School's financial statements must be performed in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States, if applicable. Together with the audited financial statements, the Charter School shall require its independent certified public accountant or certified public accounting firm to issue a report on compliance with laws, regulations, contracts and grants and on internal controls over financial reporting, based on its audit of the financial statements. A copy of this report shall be

submitted annually to the Office of New Schools or Chancellor's designee by December 1st.

- 12.2 The Charter School will submit to the Chancellor's designee a copy of the School's Annual Report, as required by the Act no later than August 1st of each calendar year.

Article 13. Press Access

- 13.1 No news organization is allowed in the Building without notification to the Department's press office. Press access granted by the Charter School shall be in connection to Charter School activities.

Article 14. Indemnification

- 14.1 In connection with the use of the premises, the Charter School shall defend, indemnify and save the Department, the City of New York, and its officers, agents, representatives and employees harmless from and against any and all claims, liability, losses, damages, expenses, suits and judgments of any nature arising from injuries to any persons or property during the term of this Agreement resulting from the Charter School's acts, omissions, negligence or misconduct, or those of any of the Charter School's employees, students, agents, invitees or contractors, in connection with its use, access and occupancy of the Building that are not the result of the Department's negligence or misconduct. In any event, the Charter School shall not indemnify the Department in connection with any activities or events conducted by the Department including any acts, omissions, negligence or misconduct of the Department or the Department's invitees resulting from the Department's use of the Building.
- 14.2 The Charter School shall be responsible for any and all acts of vandalism or mischief by its personnel, students, or invitees to the Building.

Article 15. Insurance

- 15.1 During the term of this Agreement, the Charter School shall maintain and keep in force a minimum of Two Million Dollars (\$2,000,000.00) comprehensive general liability, property loss, and personal injury insurance and One Million Dollars (\$1,000,000.00) per occurrence liability insurance. The Department and the City of New York shall be listed as additional insureds on each policy.
- 15.2 All insurance certificates shall be kept in the Charter School Principal's office.
- 15.3 The Charter School agrees to comply with any insurance regulations promulgated by the Commissioner of the State Education Department as authorized by the Act.

Article 16. Waiver

- 16.1 No provision of this Agreement shall be deemed to be waived by the Department, the Chancellor and his designee or the Charter School, unless specifically waived in writing and signed by the Department, the Chancellor, the Chancellor's designee or the Charter School, respectively.
- 16.2 One or more waivers by the Department of any covenant or condition hereof shall not be construed as a waiver of a subsequent failure to comply by the Charter School with the same, or any other, covenant or condition. The consent or approval by the Department of any act by the Charter School shall not be construed to waive or render unnecessary any consent or approval required.

Article 17. Access by the Department

- 17.1 The Department or its agent(s) shall have the right to enter and/or pass through the Dedicated Space or any part thereof at any time (a) for the purpose of making repairs in or to the Dedicated Space as allowed by this Agreement or required by law or emergency, (b) to evaluate whether or not the Charter School is meeting the terms and conditions of its charter and accountability plan, and (c) to examine the Dedicated Space during non-school hours.

Article 18. Merger, Modification, Law, Notices, Invalid Provisions

- 18.1 This Agreement contains the sole and entire Agreement and understanding of the parties. Any and all prior writings, Agreements, including, without limitation, oral communications, discussions, negotiations, commitments and understandings relating thereto, are hereby merged herein and superseded hereby.
- 18.2 The terms of this Agreement will continue to govern in the event the Charter School is relocated pursuant to Section 2.2.
- 18.3 This Agreement shall be governed by and construed according to the laws of the State of New York and may not be modified except in writing upon mutual consent of the parties.

18.4 All notices required to be given hereunder shall be in writing and, if to the Department shall be addressed to:

NYC Department of Education
Office of New Schools
52 Chambers Street, Room 405
New York, New York 10007

Notice shall be given to the Charter School at the following address:

Girls Preparatory Academy
333 East 4th Street
New York, NY 10009

Notice shall be given to the Regional Superintendent at the following address:

Peter Heaney
333 7th Ave.
New York, NY 10001

Notice shall be given to the ROC at the following address:

333 7th Ave.
New York, NY 10001

18.5 The Department hereby authorizes the Charter School to use the Dedicated Space in a manner consistent with this Facility Shared Use Agreement and Department rules. The Charter School acknowledges that the final authority with respect to the use of the Building rests solely within the discretion of the Chancellor. This Facility Shared Use Agreement is not intended as a lease or license of real property but as a voluntary consent to use the Department's facility. The Charter School acknowledges that the Department's Division of School Facilities has responsible oversight over all Department buildings and leased sites, and the Charter School agrees to comply with all directives and rules and regulations regarding the use of school facilities. The Charter School acknowledges that use of the school space situated in leased space is subject to the terms and conditions of the lease entered into between the Department and Landlord.

Article 19. Chancellor's Designee

19.1 The Chancellor's designee shall be [insert responsible party] Office of New Schools or such other person(s) whom the Chancellor shall designate from time to time in written notice to the Charter School.

Article 20. Assignment and Subletting

20.1 The Charter School shall not assign its rights or delegate its duties under this Agreement or sublet, or permit the subletting of the Dedicated or Shared Space or any part thereof.

Article 21. Security Clearance

21.1 The Charter School agrees that in the discretion of the Chief Executive of the Department's Division of Human Resources ("Chief Executive") those of its employees or its contractors providing services in the Building shall be subject to security clearance procedures, including but not limited to fingerprint checks. The Chief Executive of the Department's Division of Human Resources or his designee will determine whether any of the Charter School's employees or its Contractors subjected to security clearance procedures will be denied access to the Building, for security reasons.

- (a) In the event that any of the Charter School's employees or its contractor's employees are denied such access by the Chief Executive of the Division of Human Resources:
 - (i) the Board will notify the Charter School of the specific grounds for the decision and afford the individual an opportunity to present information on his or her behalf;
 - (ii) the Charter School immediately will remove and bar the individual from any contact with the public school building during the course of this Agreement, unless and until the decision is reversed; and
- (b) The Charter School and its contractors shall be required to bear the cost of fingerprinting its employees who are subjected to security clearance procedures, and the cost of processing such fingerprints.

NO FURTHER TEXT

Attachment A

Designated Space

It is hereby agreed that the following rooms are designated for exclusive use by the Charter School:

Guidance Office room 414
Art room on 4th floor
Classroom 503
General Office room 505
Classroom 506
Teachers Lounge room 507
Classroom 508
Classroom 510

It is hereby agreed that the following space is to be shared by the Charter School and the Public School: cafeteria, gymnasium and locker rooms, auditorium, library, stairwells, storage space and school entrances/exits.

The Charter School and the Public School hereby agree to the following arrangement for the use of Shared Space during the first year of Agreement pursuant to Section 2.4 of the Agreement:

School entrances/Exits – Students of the Charter School will enter through the back of the building beginning at 7:20am and exit from the same doors at the end of the school day or 3:00pm.

Gymnasium – The Charter School will have use of the gymnasium and locker rooms each day during the week for its daily gym classes as per agreed upon schedule.

Auditorium – The Charter School will have exclusive use of the Auditorium two Friday mornings per month for school wide assemblies (the second and fourth Fridays).

Cafeteria -- The Charter School will have use of the Cafeteria daily from 7:20am to 7:50am for breakfast, and from 11:25 to 11:50 daily for lunch.

Use of other shared space including the library and science room will be scheduled each semester.

The Charter School will use the Avenue C stairwell for entrance and dismissal and to go between the 4th and 5th floors.

Is this the long-term configuration of the building? NO

If not, does a long-term building configuration exist? NO

If either school is growing/changing enrollment, this attachment should be renegotiated as needed.

Building Council Sign-Off

School: PS. 15 Principal Name: Laura Watts Principal
Initial LW

School: Girls Prep Principal Name: [Signature] Principal
Initial [Signature]

School: _____ Principal Name: _____ Principal
Initial _____

School: _____ Principal Name: _____ Principal
Initial _____

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on June 2, 2005.

DEPARTMENT OF EDUCATION
OF THE CITY OF NEW YORK

Girls Preparatory Charter School

BY: 
For the Chancellor


BY: 

Miriam Lewis Raccah

Print Name

Executive Director

Approved:

BY: 
Office of New School Development

Title

DEPARTMENT ACKNOWLEDGMENT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 19 day of July, 2004⁵ before me, the undersigned, a Notary Public in and for said State, personally appeared one Kristen Kane, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or person upon behalf of which the individual acted, executed the instrument.

ARLENE LONGORIA
Notary Public, State of New York
No. 24-4821693
Qualified in Kings County
Commission Expires March 30, 192005

Arlene Longoria
NOTARY PUBLIC OR
COMMISSIONER OF DEEDS

ORGANIZATION ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On this 2nd day of June, 2005, before me personally came, Miriam Lewis Rocco, to me known and known to me to be the Executive Director of Girls Preparatory Charter School of New York, to execute the foregoing Agreement on behalf of Girls Preparatory Charter School of New York and said Miriam Lewis Rocco acknowledged that he/she executed the foregoing Agreement for and on behalf of said Girls Preparatory Charter School of New York.



NOTARY PUBLIC OR
COMMISSIONER OF DEEDS

MARK B. LINDE
Notary Public, State of New York
No. 01LI6121090
Qualified in Westchester County
Certificate filed in New York County
Commission Expires Jan. 10, 2007