MULTI-CRAFT CORE CURRICULUM ONLINE FORMAT LICENSING AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into effective as of [Insert Date] (the "Effective Date"), by and between North America's Building Trades Unions (the "Licensor"), and San Leandro Unified School District, the "Licensee".

RECITALS:

A. Licensor owns all proprietary rights in and to the copyrightable and/or copyrighted material known as the Multi-Craft Core Curriculum ("MC3"), including, but not limited to all text, editorial content, images, graphics, logos, illustrations, photographs, video, audio and other materials, as well as the designs, icons, layout, "look and feel," and all other graphical elements and all related code and software, hereinafter collectively known as the "Work", and has the exclusive right to license to others the right to produce, copy, make, sublicense or sell the Work.

B. Licensor owns all rights in and to the Work and retains all rights to the Work, which are not transferred herein, and retains all common law copyrights and all federal copyrights which have been, or which may be, granted.

C. Licensee desires to obtain, and Licensor has agreed to grant, a license authorizing the use of the Work by Licensee in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration as set forth herein, Licensor and Licensee agree as follows:

1. Grant of License.

A. Licensor hereby grants to Licensee, in accordance with the terms and conditions of this Agreement, a non-exclusive, non-transferrable license to use the Work in the course of teaching the MC3 and for no other purpose whatsoever without the express written permission of the Licensor.

B. No part of the MC3 may be sold, sub-licensed, reproduced or distributed in any form or by any means, or stored in a database or retrieval system by the Licensee without the prior written permission of the Licensor.

C. Licensee will respect the Licensor's copyright protections of the Work by utilizing only original MC3 materials and will not reproduce or digitize the MC3 materials for distribution or classroom use without the prior written permission of the Licensor.

D. Licensee hereby accepts such license and agrees that Licensee shall not use the Work except in accordance with the terms and conditions of this Agreement.

Licensee acknowledges and agrees that the license granted herein is non-exclusive and that Licensor may license others to use the Work.

E. Licensee agrees to provide Licensor with placement data regarding each student utilizing the Work by entering into the “Trade Choice” field in the MC3 Learning Management System database the name of the specific trade the student has selected and in the “Apprenticeship Placement” field the name of the apprenticeship program the student has enrolled in. Licensee shall have a continuing obligation to enter such information into the database as it becomes available.

2. Ownership of the Work.

A. Licensee acknowledges that Licensor is the sole and exclusive owner of the Work and of all associated federal intellectual property rights and Licensee shall do nothing inconsistent with such ownership. Licensee further agrees that it will not claim ownership rights to the Work, or any derivative, compilation, sequel or series, or related Work owned by or used by Licensor. Licensee agrees that nothing in this Agreement shall give Licensee any right, title, or interest in the Work other than the right to use the same in accordance with the terms of this Agreement. Licensee agrees not to make similar derivatives of the Work. Licensee admits the validity of all copyrights for the Work and all associated intellectual property rights and acknowledges that any and all rights that might be acquired by Licensee because of its use of the Work shall inure to the sole benefit of Licensor.

B. Licensee expressly acknowledges Licensor’s ownership of all rights, title and interest, including copyrights, in the Work, except where the copyright of another party is expressly noted. All materials, including but not limited to all text, editorial content, images, graphics, logos, illustrations, photographs, video, audio, and other materials, as well as the designs, icons, layout, “look and feel,” and all other graphical elements and all related code and software, and all copyrights, trademarks, service marks, tradenames, patents and other intellectual property rights in any of the foregoing are the sole and exclusive property of Licensor and are protected by U.S. laws and international treaties.

3. Term and Termination.

A. This Agreement shall commence as of the Effective Date and shall continue in full force and effect for a period of one year and shall automatically renew for additional one-year periods, unless either party provides written notice of non-renewal to the other party, not less than sixty days prior to the expiration of any one year term.

B. In the event that Licensee fails to pay when due the fees provided for in this Agreement, Licensor, at its discretion, may immediately terminate this Agreement.

C. In the event that Licensee sells all of its assets to a third party, or otherwise ceases to exist in its current form, Licensor, at its discretion, may immediately terminate this Agreement.

D. Upon termination or expiration of the license granted under this Agreement by operation of law, the terms of this Agreement or otherwise, all rights, including the right to use the Work, privileges and obligations arising from this Agreement shall cease to exist and all copies of the Work shall be destroyed or promptly returned to Licensor.

E. The following provisions shall survive any termination or expiration of this Agreement: Section 1.E. (Entry of Placement Data); 2 (Ownership of the Work); Section 6 (Indemnification); Section 9 (Dispute Resolution); and Section 10 (Governing Law, Jurisdiction, Venue)

4. Fees.

Licensee agrees to pay Licensor a fee of one hundred dollars ($100.00) for each student who successfully completes the Work. If in subsequent years, Licensor uniformly raises the per student fee for all Licensees, Licensee agrees to pay the new fee or at its option terminate this Agreement. The per student fee shall be due and payable no later than ten (10) business days from the end of each class in which the Work is to be used. If a student attends more than one class, a new licensing fee must be paid for each class a student attends. Renewals or extensions of this Agreement are subject to increases in the fee and/or additional fees, to be agreed upon by the Parties prior to renewal or extension. Once a class begins and a student is registered, Licensee shall be responsible for payment of the student fee and no refunds will be made regardless of whether a student completes the course.

5. Use of the Work.

A. Licensor shall have control over the quality of use of the Work. At the option of Licensor, Licensor will provide to Licensee an approved End User License Agreement that must be accepted prior to Licensor allowing students online access to the Work. For any portion of the Work that Licensee is authorized to download and distribute to students, Licensee agrees to mark such parts of the Work with any reasonable copyright and/or trademark notices provided by Licensor and comply with any reasonable standards promulgated by Licensor that relate to the intellectual property protection and use of the Work by Licensee and its instructors and students.

B. Licensee shall provide Licensor, upon Licensor’s request, with representative samples of how Licensee is using the Work. If, at any time, any use of the Work fails to conform to Licensor’s standards, Licensor may provide to Licensee notice of said failure. Licensee shall cure said failure within fifteen days from the date of such notice. In the event that said failure is not cured within the period described in the preceding sentence, Licensor may then terminate this Agreement immediately and all non-conforming copies of the Work destroyed or promptly submitted to Licensor.

C. Licensee shall be solely responsible for all logistical details in connection with presenting the Work, including, but not limited to, classroom facilities, hiring and compensation of instructors, audio-visual equipment, computers and internet access.

6. Indemnification.

A. Licensee shall fully indemnify, defend, and hold harmless Licensor, its officers, employees, agents and affiliated organizations from and against any and all claims, losses, damages, expenses, and liability, other than those for infringement, including without limitation, suits arising from offering, promoting, advertising, sale, or use by Licensee, or any of its authorized sublicenses, of the Work, whether or not such use conforms to standards set by Licensor, provided that such claim, loss, damage, expense, or liability does not arise from the negligence of Licensor.

B. In the event that Licensee becomes aware of any claimed or alleged infringement of the Work by a third party, Licensee shall promptly advise Licensor in writing of the nature and extent of such infringement or dilution. Licensor has no obligation to take any action whatsoever in the event that any infringement or dilution occurs with respect to the Work, but Licensor shall have the sole right to determine whether any action shall be taken. In the event Licensor sues or takes other action, legal, equitable, administrative, or otherwise, to stop an infringement or dilution of the Work, Licensee shall cooperate fully with Licensor. Licensee has no right to enforce the Work through litigation without prior written authorization of Licensor. In any legal action arising from use, or ownership rights of the Work, where both Licensor and Licensee are co-parties, Licensor retains the right to control the litigation, including any and all settlement negotiations.

7. Assignment.

This Agreement (including, without limitation, the license granted hereunder) is personal to Licensee and shall not be assigned or transferred by Licensee, including, without limitation, by operation of law except upon written approval by the Licensor. Any attempt on the part of Licensee to assign, sub-license, or transfer Licensee’s rights under this Agreement, except as provided herein, shall be invalid and void. Licensor shall have the right to assign and/or license its rights and obligations under this Agreement and all its right, title and interest in the Work without the consent of Licensee.

8. Notices.

Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing and delivered by courier, reputable overnight delivery service or by registered or certified mail, return receipt requested, with postage prepaid and addressed to the following persons and addresses, or to such other addresses or persons as any party may subsequently request by notice in writing to the other party:

Licensor:

Tom Kriger
North America's Building Trades Unions
815 16th Street, NW, Suite 600, Washington, DC 20006 202-756-4672
tkriger@buildingtrades.org

Licensee:

[Licensee Contact Name] [Licensee Company] [Licensee Address] [Licensee Telephone] [Licensee Email]

Any such notice shall be effective when received. 9. Dispute Resolution.

Prior to initiating a lawsuit involving a dispute arising out of or relating to this Agreement, the initiating party shall deliver such party's disputed position(s) in a written notice to the other party, and the parties shall attempt in a good faith effort to arrive at a mutual resolution of any such dispute, *provided, however,* that if no resolution is reached within ten (10) business days of delivery of such notice, then neither party shall be restricted from initiating legal proceedings.

10. Governing Law; Jurisdiction; Venue.

The validity, interpretation, construction and performance of this Agreement will be governed by the laws of the District of Columbia without regard to its conflict or choice of law principles. Each party hereby irrevocably consents and submits to the personal jurisdiction of, and to the exclusive venue for any legal proceedings or actions arising out of this Agreement in the local and federal courts located in the District of Columbia. The parties agree that this Agreement is deemed to have been made in the District of Columbia. Each party waives a jury trial in any matter arising out of or relating to this Agreement.

11. Independent Business Relationship.

Licensor and Licensee are independent entities and are not and shall not be construed as joint venturers, partners, employer/employee, or agents of the other, and neither shall have the power to bind or obligate the other, except as set forth in this Agreement.

12. Miscellaneous.

A. If the Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g, and rules and regulations promulgated under this law, is applicable to any identifiable data on students utilizing the MC3 pursuant to this Agreement, Licensor shall comply with the requirements of FERPA and its implementing regulations.

B. The waiver by either party of any provision of this Agreement on any occasion and under any particular circumstances will not operate as a waiver of such provision on any other occasion or under any other circumstances.

C. This Agreement constitutes the entire agreement and understanding of the Licensor and Licensee with respect to the subject matter hereof, superseding any and all prior agreements, understandings, negotiations, and discussions. No amendment, alteration, modification, or waiver of this Agreement shall be effective or binding unless it is set forth in writing and signed by both parties.

D. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provisions to any other persons or circumstances, shall not be affected thereby.

E. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the undersigned have executed this Agreement. For the Licensor: North America's Building Trades Unions

_____ Name]

For the Licensee: [Name]

_____ [Name]

Date:_____

Date:_____