

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO  
INSTALLMENT PURCHASE CONTRACT AND A SUPPLEMENT TO DECLARATION OF TRUST  
AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF  
\$5,000,000 FULL TERM CERTIFICATES OF PARTICIPATION, SERIES 2010C

BE IT RESOLVED, by the School Board (the "School Board") of Independent School District No. 709 (Duluth), St. Louis County, Minnesota (the "District"), as follows:

Section 1. A. Pursuant to the authority contained in Minnesota Statutes, Section 126C.40, Subd. 6 (the "Act"), the District is authorized to purchase real or personal property under an installment contract or may lease real or personal property with an option to purchase under a lease purchase agreement upon application to, and approval by, the Minnesota Commissioner of Education.

B. The District has approved a Long-Range Facilities Plan (the "Plan") and the Commissioner of Education has approved the District's borrowing of \$111,442,577 under the Act to finance the purchase of real and personal property for the projects set forth in the Plan as described in the Original Contract, as hereinafter defined (the "Original Project").

C. By Resolution No. B-5-08-2541, adopted May 29, 2008, the School Board determined that it was necessary, expedient and in the best educational interests of the District's pupils and residents that the District enter into an installment purchase contract pursuant to the Act to finance the costs of the Original Project and issuing full term certificates of participation in the installment payments under the installment purchase contract in the maximum principal amount of \$111,440,000 pursuant to a declaration of trust.

D. Pursuant to the Act, the District applied to the Commissioner of Education for permission to make an additional levy for the installment payments under the Original Contract to finance the Original Project and the Commissioner authorized the Original Project and the levy.

E. The District selected U.S. Bank National Association, St. Paul, Minnesota (the "Trustee") to act as vendor and the trustee as follows: the Trustee, as vendor, entered into an Installment Purchase Contract (the "Original Contract") with the District regarding the acquisition, construction and equipping of the Original Project, and the District and the Trustee entered into a Declaration of Trust dated as of June 1, 2008 (the "Original Declaration"), pursuant to which Full Term Certificates of Participation in the installment payments under the Original Contract in the principal amount of \$111,440,000 (the "2008 Certificates"), were executed and delivered by the Trustee.

F. The District has approved an amendment to the Plan and modified the projects to be financed under the Original Contract and the Commissioner of Education has approved the amendment to the Plan and the modification to the Original Project and has approved the District's borrowing of an additional \$5,000,000 under the Act to finance the Original Project, as modified, and as described in the Amendment to Contract, as hereinafter defined.

G. By Resolution No. B-9-10-\_\_\_\_ adopted September 13, 2010, the School Board determined that it was necessary, expedient and in the best educational interests of the District's pupils and residents that the District enter into an amendment to the Original Contract to provide additional funds to purchase the real and personal property described in the Plan, as amended, and issuing full term certificates of participation in the installment payments under a supplement to the Original Declaration in the maximum principal amount of \$5,000,000.

H. The Trustee, as vendor, and the District, as vendee, shall enter into an Amendment to Installment Purchase Contract dated as of October 1, 2010 (the "Amendment to Contract") to revise and restate the installment payments, modify the description of the Original Project as described on Exhibit A hereto, and as set forth in the Amendment to the Contract (the "Project") and amend other related matters, such amendment shall modify the Original Contract (the Original Contract as amended by the Amendment to Contract is herein referred to as the "Contract"). The District and the Trustee shall enter into a Supplement to Declaration of Trust dated as of October 1, 2010 (the "Supplement to Declaration"), pursuant to which the Full Term Certificates of Participation, Series 2010C, in the installment payments under the Contract in the principal amount of \$5,000,000 (the "2010C Certificates") shall be executed and delivered by the Trustee (the Original Declaration as supplemented by the Supplement to Declaration is herein referred to as the "Declaration").

I. Pursuant to the Act, the District has applied to the Commissioner of Education for permission to make an additional levy for the additional installment payments under the Amendment to Contract to finance the Project, as modified, and the Commissioner has authorized the modified Original Project and the levy.

J. Forms of the following documents relating to the financing have been prepared and submitted to the School Board:

(1) The Amendment to Contract proposed to be made and entered into between the District and the Trustee; and

(2) The Supplement to Declaration proposed to be made and entered into between the District and the Trustee.

Section 2. A. Northland Securities, Inc., financial consultant to the District, has given notification to at least five firms determined by Northland Securities, Inc. to be prospective bidders on the Certificates at least two days (omitting Saturdays, Sundays, and legal holidays) before the date set for receipt of bids on the 2010C Certificates.

B. The District has solicited bids for the sale of the Certificates and an offer has been received from \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (the "Purchaser"), to purchase the 2010C Certificates at a cash price of \$\_\_\_\_\_, plus accrued interest on the total principal amount from October 1, 2010, to the date of delivery and upon condition that the 2010C Certificates mature and bear interest as follows and are payable at the times and on the terms set forth in the Contract and the Declaration.

C. The Certificates to be issued shall mature on February 1 in the respective years and amounts stated and shall bear interest at the annual rates as follows:

<i>YEAR</i>	<i>AMOUNT</i>	<i>INTEREST RATE</i>
2012	\$210,000	%
2013	\$255,000	%
2014	\$255,000	%
2015	\$260,000	%
2016	\$265,000	%
2017	\$265,000	%
2018	\$275,000	%

2019	\$280,000	%
2020	\$285,000	%
2021	\$295,000	%
2022	\$305,000	%
2023	\$315,000	%
2024	\$325,000	%
2025	\$335,000	%
2026	\$345,000	%
2027	\$360,000	%
2028	\$370,000	%

D. Redemption. (i) The Certificates maturing in the years 2012 through 2019 shall not be subject to redemption and prepayment before maturity, but those maturing, or subject to mandatory redemption, in the year 2020 and in subsequent years shall each be subject to redemption and prepayment at the option of the District on February 1, 2019, and on any date thereafter, in whole or in part, and if in part, at the option of the District and in such manner as the District shall determine at a price of par plus accrued interest to the date of redemption, as provided for in the Declaration.

(ii) In the event of damage to all or a portion of the Project and the District makes the certification and election at the times and in the manner set forth in the Contract, the 2010C Certificates, or a portion thereof, shall be subject to prepayment on any date, at par plus accrued interest to the date of redemption, as provided for in the Declaration.

(iii) The 2010C Certificates maturing on February 1 in the year 20\_\_ shall be subject to mandatory redemption prior to maturity pursuant to the requirements of the Declaration at a redemption price equal to the stated principal amount thereof plus interest accrued thereon to the redemption date, without premium. The Trustee shall select for redemption, by lot or other manner deemed fair, on February 1 in each of the following years the following stated principal amounts:

For Certificates maturing on February 1, 20\_\_:

Year	Amount
20__	\$
20__*	\$

\* Final Maturity

E. The District, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The Chair and the Clerk are authorized to execute on the part of the District a contract for the sale of the Certificates in accordance with the Purchaser's proposal.

Section 3. It is hereby found, determined and declared by the School Board that:

A. It is desirable and in the best interests of the District to enter into the Amendment to Contract and the Supplement to Declaration;

B. The terms of the Amendment to Contract and the Supplement to Declaration are found to be advantageous to the District and are hereby approved; and

C. The installment payments under the Contract are absolute and unconditional as provided for in Article III of the Contract and are not subject to annual appropriation of the District.

Section 4. A. For the prompt and full payment of the installment payments under the Contract when due, there is hereby levied a direct, annual, ad valorem tax, as an additional levy pursuant to Minnesota Statutes, Section 126C.40, and other laws, upon all taxable property within the District which shall be extended upon the tax rolls and collected with and as part of the other general property taxes in the District for the years and in the amounts set forth on Exhibit B hereto.

B. The District maintains a Debt Service Fund on its books and records. A separate account was created within the Debt Service Fund and is designated as the "Installment Purchase Contract Account" (the "Contract Account"). The tax levies provided for in this Section 4 are hereby pledged to, and shall be used for no purpose other than, the payment of installment payments under the Contract; provided, however, that if any such installment payment shall become due when there is not sufficient money in the Contract Account, the Treasurer may pay the same from any other funds of the District and said funds shall be reimbursed for such advance out of the proceeds of the taxes herein levied or appropriated.

C. Such tax levies shall be irrevocable as long as the Contract remains in effect.

Section 5. The Amendment to Contract and the Supplement to Declaration are hereby approved. The Chair and the Clerk are hereby authorized and directed to execute and deliver the Amendment to Contract and the Supplement to Declaration substantially in the forms now on file with the Clerk, with such necessary and appropriate omissions, modifications, insertions and additions as do not materially affect the substance of the transaction, consistent with the Act, as the Chair in his discretion shall determine. The execution of the Amendment to Contract and the Supplement to Declaration by the Chair, with the advice of the Attorney for the District, shall be conclusive evidence of such determination. All of the provisions of the Amendment to Contract and the Supplement to Declaration, when executed and delivered as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated herein and shall be in full force and effect from the date of execution and delivery thereof. The District approves the 2010C Certificates being registered as depository obligations with The Depository Trust Company, New York, New York, as set forth in the Declaration.

Section 6. The Chair and the Clerk are hereby authorized to execute and deliver, on behalf of the District, such other documents as are necessary or appropriate in connection with the Amendment to Contract and the Supplement to Declaration, and the issuance, sale and delivery of the 2010C Certificates.

Section 7. All covenants, stipulations, obligations and agreements of the District contained in this Resolution and the Contract and the Declaration shall be deemed to be the covenants, stipulations, obligations and agreements of the District to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the District upon execution and delivery of the Amendment to Contract and the Supplement to Declaration. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the District or its officers by the provisions of this Resolution or of the aforementioned documents to be executed and delivered by the District shall be executed or performed by the District or by such officers of the District, or such board, body, authority or agency thereof as may be required by law to exercise such powers and to perform such duties.

Section 8. Except as herein otherwise expressly provided, nothing in this Resolution or in the Contract and the Declaration, expressed or implied, is intended or shall be construed to confer upon

any person or firm or corporation, other than the District, the Trustee, the Purchaser, or any holder of the 2010C Certificates issued under the provisions of this Resolution, any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, that the aforementioned documents and all of their provisions being intended to be and being for the sole and exclusive benefit of the District, the Trustee, the Purchaser, and any holder from time to time of the 2010C Certificates issued under the provisions of this Resolution.

Section 9. The officers and other agents or employees of the District are hereby authorized to do all acts and things required of them by or in connection with this Resolution, the Amendment to Contract and the Supplement to Declaration, and the 2010C Certificates, without further action of the Board, for the full, punctual and complete performance of all the terms, covenants and agreements contained in the 2010C Certificates, the aforementioned documents and this Resolution, including but not limited to the execution and delivery of amendments to the Contract to add real property to the Contract and the execution and delivery of deeds and ground leases as provided for in the Contract.

Section 10. In the event any of the officers of the District authorized to execute the documents on behalf of the District under this Resolution shall for any reason be unable to do so, any other officer of the District authorized to act for such designated officer is hereby directed and authorized to do so on behalf of the District with the same effect as if executed by the officer authorized to do so in this Resolution.

Section 11. All actions of the members, officers, employees and staff of the District heretofore taken and in furtherance of this financing are hereby approved, ratified and confirmed.

Section 12. A. The Clerk of the District is directed to file in the office of the County Auditor of St. Louis County a certified copy of this Resolution and such other information as the County Auditor may require, and to obtain from the County Auditor a certificate stating that the 2010C Certificates herein authorized have been duly entered on his register.

B. The Chair, the Clerk, the Treasurer and other officers of the District are authorized and directed to prepare and furnish, with regard to the issuance of the 2010C Certificates, certified copies of all proceedings and records of the District relating to the 2010C Certificates and such other affidavits, certificates and opinions as may be required to show the facts relating to the legality, tax exemption and marketability of the 2010C Certificates as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; that all such certified copies, certificates, affidavits and opinions, including and heretofore furnished, shall constitute representations of the District as to the truth of all statements made by the District and contained herein.

Section 13. The School Board has covenanted and has obligated itself in Resolution No. B-9-10-\_\_\_\_ adopted September 13, 2010, to be bound by the provisions of Minnesota Statutes, Section 126C.55. The School Board hereby reaffirms such covenants and obligations.

Section 14. The District hereby authorizes the circulation of the final Official Statement in connection with the sale and delivery of the 2010C Certificates.

Section 15. Tax Covenants.

A. The District covenants and agrees with the holders of the 2010C Certificates that the District will (i) take all action on its part necessary to cause the interest on the 2010C Certificates to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the 2010C Certificates and investment earnings thereon,

making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the 2010C Certificates to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the 2010C Certificates and investment earnings thereon on certain specified purposes.

B. No portion of the proceeds of the 2010C Certificates shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the 2010C Certificates were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Certificates or \$100,000. To this effect, any proceeds of the 2010C Certificates and any sums from time to time held in the Contract Revenue Fund or the Prepayment Fund by the Trustee (or any other District fund or account which will be used to pay principal and interest to become due on the 2010C Certificates) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations. In addition, the proceeds of the 2010C Certificates and money in the Contract Revenue Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the 2010C Certificates to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

C. The School Board covenants and certifies to and for the benefit of the owners of the 2010C Certificates that no use will be made of the proceeds of the Certificates, which will cause the 2010C Certificates to be arbitrage bonds within the meaning of Section 148(a) of the Code and the Treasury Regulations promulgated thereunder. Pursuant to such covenant, the School Board hereby agrees to comply throughout the term of the issue of the 2010C Certificates with the requirements of Section 148 of the Code and any Treasury Regulations promulgated thereunder and Article V of the Declaration.

D. In order to qualify the 2010C Certificates as "qualified tax-exempt obligations: within the meaning of Section 265(b)(3) of the Code, the District hereby makes the following factual statements and representations:

(1) the 2010C Certificates are not "private activity bonds" as defined in Section 141 of the Code;

(2) the District hereby designates the 2010C Certificates as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code;

(3) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the District (and all entities whose obligations will be aggregated with those of the District) during the calendar year in which the 2010C Certificates were issued will not exceed \$30,000,000; and

(4) not more than \$30,000,000 of obligations issued by the District during the calendar year in which the 2010C Certificates were issued have been designated for the purposes of Section 265(b)(3) of the Code.

Section 16. Continuing Disclosure. The District acknowledges that the 2010C Certificates are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the 2010C Certificates and the security therefor and to permit underwriters of the 2010C Certificates to comply with the Rule, which will enhance the marketability of the 2010C Certificates, the Chair and the Clerk are hereby authorized and directed to execute a Continuing Disclosure Certificate substantially in the form of the Certificate currently on file in the office of the District.

Adopted this 21<sup>st</sup> day of September, 2010.

Motion made by Member \_\_\_\_\_, seconded by Member \_\_\_\_\_, to approve Resolution #B-9-10-\_\_\_\_, as presented. Upon a vote taken, the same was approved as follows:

Yeah:

Nay:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Chair

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## **EXHIBIT A**

### **Project Descriptions**

1. Congdon Elementary
  - Gym Addition
  - Portion of Land Acquisition for Site Expansion and Parking Lot Improvements
2. Grant Elementary
  - Classroom, Gym, Media Center, Head Start/Special Education and Resource Area Additions
  - Land Acquisition for Site Expansion
3. Homecroft Elementary
  - Classroom Addition
4. New Laura MacArthur Elementary
  - New Elementary Building for 550 Students (to be enlarged for Head Start and special education program)
  - Land Acquisition for Site Expansion
5. New Lester Park Elementary
  - New Elementary Building for 550 Students
  - Land Acquisition for Site Expansion
6. Ordean High School
  - Classroom, Activities and Secondary Technical Additions
  - Stadium
  - Portion of Land Acquisition for Site Expansion and Parking Lot Improvements
7. East Middle School
  - New Aquatics Center
8. Denfeld High School
  - New Cafeteria, Classroom and Secondary Technical Additions
  - Land Acquisition for Site Expansion
9. Transportation Facility
  - Preliminary Design Only



**EXHIBIT B**

**Tax Levy Schedule**

LEVY YEAR	COLLECTION YEAR	2008 CERTIFICATES TAX LEVY	2010C CERTIFICATES TAX LEVY	TOTAL TAX LEVY
2007	2008	\$5,633,908.33*	---	
2008	2009	\$6,120,462.50	---	
2009	2010	\$6,530,937.50	---	
2010	2011	\$7,780,312.50		
2011	2012	\$7,933,662.50		
2012	2013	\$8,097,737.50		
2013	2014	\$8,257,487.50		
2014	2015	\$8,415,887.50		
2015	2016	\$8,581,487.50		
2016	2017	\$8,753,487.50		
2017	2018	\$8,946,087.50		
2018	2019	\$9,147,887.50		
2019	2020	\$9,357,887.50		
2020	2021	\$9,577,187.50		
2021	2022	\$9,793,187.50		
2022	2023	\$10,027,725.00		
2023	2024	\$10,279,287.50		
2024	2025	\$10,473,150.00		
2025	2026	\$10,693,750.00		
2026	2027	\$10,904,250.00		

\* Anticipatory Levy