

Commissioner Nelson introduced the following Resolution and moved its adoption:

RESOLUTION NO. 2005-36

**RESOLUTION APPROVING THE ISSUANCE AND SALE OF A \$850,000
HEALTH CARE FACILITIES REVENUE NOTE, SERIES 2005
(PRODUCTIVE ALTERNATIVES, INC. PROJECT) AND
AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING
THERE TO**

BE IT RESOLVED, by the Board of Commissioners (the "Board") of Otter Tail County, Minnesota (the "Issuer"), as follows:

- Section 1. Definitions. The terms used herein, unless the context hereof requires otherwise, have the following meanings, and any other terms defined in the Loan Agreement (hereinafter defined) have the same meanings when used herein as assigned to them in the Loan Agreement unless the context or use thereof indicates another or differing meaning or intent:
- a. Act: Minnesota Statutes, Sections 469.152 through 469.165, as amended.
 - b. Bond Account: the account established pursuant to Section 7 of this Resolution.
 - c. Borrower: Productive Alternatives, Inc. being (as represented to the Issuer), a Minnesota nonprofit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, the corporate offices of which are located at 1205 North Tower Road in Fergus Falls, Otter Tail County, Minnesota.
 - d. Bond Counsel: the law firm of Fryberger, Buchanan, Smith & Frederick, P.A. or any other firm of nationally-recognized bond counsel.
 - e. Code: the Internal Revenue Code of 1986, as amended.
 - f. Board: the governing body of the Issuer.
 - g. County: Otter Tail County, Minnesota.
 - h. Disbursing Agreement: the Disbursing Agreement to be entered into among the Borrower, the Lender and the Title Company, pursuant to which the parties hereto agree to certain conditions precedent to disbursement of proceeds of the Note.

- i. Documents: the Joint Powers Agreement, the Loan Agreement, the Mortgage, the Pledge Agreement and the Disbursing Agreement and other documents required for the issuance of the Note.
- j. DEED: the Minnesota Department of Employment and Economic Development.
- k. Host Municipalities: the Issuer and the City of Fergus Falls, a municipal corporation and political subdivision of the State.
- l. Issuer: Otter Tail County, body politic and corporate and political subdivision of the State.
- m. Issuer Documents: collectively, the Loan Agreement and the Pledge Agreement.
- n. Joint Powers Agreement: the Joint Powers Agreement between the Host Municipalities regarding issuance of the Note.
- o. Lender: Bremer Bank, National Association, a national banking corporation with an office located in Fergus Falls, Minnesota.
- p. Loan Agreement: the Loan Agreement to be entered into between the Issuer and the Borrower, pursuant to which the Borrower agrees to repay the loan made thereunder in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Note.
- q. Mortgage: the combination Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents from the Borrower to the Lender, pursuant to which the Borrower will secure its obligations with respect to the Note under the Loan Agreement, including the payment of amounts due under the Loan Agreement, by granting to the Lender a first mortgage interest in the property described therein.
- r. Note: the Issuer's \$850,000 Health Care Facilities Revenue Note, Series 2005 (Productive Alternatives, Inc. Project).
- s. Pledge Agreement: the Pledge Agreement to be entered into among the Issuer, the Borrower and the Lender, pursuant to which the Issuer pledges and grants a security interest in all of its rights, title, and interest in the Loan Agreement (except for the Unassigned Issuer's Rights) to the Lender.
- t. Project: refinance commercial indebtedness incurred by the Borrower, for constructing and equipping Willows, 1011 North Tower Road, Fergus Falls, Minnesota, an approximately 5,580 square foot program facility for persons with developmental

disabilities, and financing construction of and equipping an approximately 3,200 square foot facility located at 1017 North Tower Road, Fergus Falls, Minnesota, to be used to provide detoxification and other chemical dependency services and paying costs associated with the financing.

- u. Registrar: bond registrar and transfer agent for the Note.
- v. State: the State of Minnesota.

Section 2. Recitals.

- a. An initial resolution was adopted by the Board on May 17, 2005, scheduling a public hearing on the proposed issuance of revenue obligations, in one or more series, in an amount not to exceed \$900,000 to undertake the Refunding and to finance the Project all with respect to the Borrower.
- b. The Issuer has, after due notice and publication thereof, on June 7, 2005, held a public hearing on the Project and the financing thereof, and persons in attendance wishing to speak on the Project and financing thereof were given an opportunity to do so at the hearing.
- c. A resolution was adopted by the Board on June 7, 2005 which gave preliminary approval to the issuance of revenue obligations and the proposal to undertake and finance the Project, approved the Joint Powers Agreement and referred the proposal regarding the issuance of revenue obligations in order to finance the cost of the Project on behalf of the Borrower to DEED. The findings of the Board contained in said resolution are ratified and confirmed as though stated in full herein.
- d. Drafts of the following documents have been submitted to this Board and are on file in the office of the County Coordinator:
 - i. the Loan Agreement;
 - ii. the Pledge Agreement;
 - iii. the Mortgage;
 - iv. the Disbursing Agreement; and
 - v. the form of the Note.

Section 3. Findings. The Board has heretofore determined, and does determine, as follows:

- a. the financing of the Project will further the public purposes set forth in the Act, including the promotion of the public welfare by (i) assisting in providing adequate healthcare services, including services to persons with developmental disabilities and chemical dependency, (ii) preventing, so far as possible, the emergence of blighted and marginal lands and areas of chronic unemployment, and the Issuer has by this Resolution authorized the Project and execution and delivery of the Note and the Issuer Documents, which documents specify the terms and conditions for financing the Project;
- b. the Borrower has informed the Issuer that the Project would not be undertaken at present but for the availability of the financing provided by the Notes, the aggregate amount of which will not exceed \$850,000 as hereinafter provided; and
- c. the Note and the interest accruing thereon will not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness and will not constitute or give rise to a pecuniary liability or a charge against the general credit or taxing powers of the Issuer and neither the full faith and credit nor the taxing powers of the Issuer, are pledged for the payment of the Note or interest thereon.

Section 4. The Note.

- a. In order to provide for the financing of the Project, the Issuer determines, based on representations of the Borrower, that the offer of the Lender to purchase the Note in an original principal amount of not to exceed \$850,000, at an interest rate of not to exceed 290 basis points over the 5-year LIBOR/Swap rate in effect on the date of closing and delivery of the Note, and upon the terms and conditions hereafter specified and specified in the Note is reasonable and is accepted. The Issuer will loan the proceeds of the Note to the Borrower in order to finance the Project.
- b. The Note shall be in substantially the form submitted to the Board, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof as may be necessary and appropriate and approved by Bond Counsel and the Borrower prior to the execution thereof; and shall mature in the years and amounts, be subject to redemption, and bear interest at the rate as therein specified, subject to adjustment as therein specified.
- c. The Note shall be executed on behalf of the Issuer by the signatures of its Chair and County Coordinator. The seal of the Issuer may be omitted as allowed by law. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. In the event of the absence or disability of the Chair or the County Coordinator such officers of the

Issuer as may act in their behalf, shall without further act or authorization of the Board of Commissioners execute and deliver the Note.

Section 5. Approval and Execution of Documents.

- a. The Issuer Documents and the Note are made a part of this Resolution as though fully set forth herein and are approved in substantially the forms on file with the Board. The Chair and the County Coordinator are authorized and directed to execute, acknowledge, and deliver the Issuer Documents and the Note on behalf of the Issuer with such changes, insertions, and omissions therein as the Issuer's attorney may hereafter deem appropriate, such execution by the Chair and County Coordinator to be conclusive evidence of approval of such documents in accordance with the terms hereof.
- b. The Chair, the County Coordinator and the Treasurer are authorized and directed to execute and deliver all other documents which may be required under the terms of the Issuer Documents or the Note or by Bond Counsel, and to take such other action as may be required or deemed appropriate for the performance of the duties imposed thereby to carry out the purposes thereof.
- c. The Chair, County Coordinator, Treasurer and other officers of the Issuer are authorized to furnish certified copies of this Resolution and all proceedings and records of the Issuer relating to the Note, and such other affidavits and certificates as may be required to show the facts relating to the Issuer respecting the Note, as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall constitute representations of the Issuer as to the truth of all statements contained therein.
- d. If for any reason the Chair, Treasurer, County Coordinator, or any other officers, employees, or agents of the Issuer authorized to execute certificates, instruments, or other written documents on behalf of the Issuer shall for any reason cease to be an officer, employee, or agent of the Issuer after the execution by such person of any certificate, instrument, or other written document, such fact shall not affect the validity or enforceability of such certificate, instrument, or other written document.
- e. If for any reason the Chair, Treasurer, County Coordinator, or any other officers, employees, or agents of the Issuer authorized to execute certificates, instruments, or other written documents on behalf of the Issuer shall be unavailable to execute such certificates, instruments, or other written documents for any reason, such certificates, instruments, or other written documents may be executed by a deputy or assistant to such officer, or by such other officer of the Issuer as in the opinion of the Issuer's attorney is authorized to sign such document and do all things and execute all instruments and

documents required to be done or executed by such officers, with full force and effect, which executions or acts shall be valid and binding on the Issuer.

Section 6. Registration.

- a. *Registered Form.* The Note shall be issued only in fully registered form. The Note shall be numbered R-1 in a denomination equal to the principal amount thereof.
- b. *Registration, Transfer and Exchange.* The Issuer appoints the County Coordinator as Registrar. The effect of registration and the rights and duties of the Issuer with respect thereto are as follows:
 - i. *Register.* The Registrar must keep a bond register for the Note in which the Registrar provides for the registration of ownership of the Note and the registration of transfers and exchanges of the Note.
 - ii. *Transfer of Note.* Subject to the provisions of clause x of this subsection, upon surrender for transfer of a Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar will authenticate and deliver, in the name of the designated transferee, one new note in an aggregate principal amount equal to the then outstanding principal amount of the Note so surrendered and of like maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the 15th day of the month preceding each interest payment date and until such interest payment date.
 - iii. *Issuance of New Notes.* Subject to the provisions of clause x of this subsection, the Issuer shall, at the request and expense of the Lender, issue new notes in aggregate outstanding principal amount equal to that of the Note surrendered, and of like tenor except as to number, principal amount, and the amount of the monthly installments payable thereunder, and registered in the name of the Lender or such transferee as may be designated by the Lender.
 - iv. *Exchange of Note.* When a Note is surrendered by the registered owner for exchange the Registrar will authenticate and deliver one new note in an aggregate principal amount equal to the then outstanding principal amount of the Note surrendered and of like maturity, as requested in writing by the registered owner or the owner's attorney.

- v. *Cancellation.* A Note surrendered upon any transfer or exchange will be promptly canceled by the Registrar and thereafter disposed of as directed by the Issuer.
- vi. *Improper or Unauthorized Transfer.* When a Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the Note so presented until the Registrar is satisfied that the endorsement on the Note or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar will incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.
- vii. *Persons Deemed Owners.* The Issuer and the Registrar may treat the person in whose name a Note is registered in the bond register as the absolute owner of the Note, whether the Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on the Note and for all other purposes, and payment so made to a registered owner or upon the owner's order will be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.
- viii. *Taxes, Fees and Charges.* For a transfer or exchange of a Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to the transfer or exchange.
- ix. *Mutilated, Lost, Stolen or Destroyed Note.* If a Note becomes mutilated or is destroyed, stolen or lost, the Registrar will deliver a new Note of like amount, number, maturity date, redemption privilege and tenor in exchange and in substitution for and upon cancellation of the mutilated Note or in lieu of or in substitution for any Note destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar and Issuer in connection therewith; and, in the case of a Note destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to the Registrar that the Note was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar and Issuer of an appropriate bond or indemnity in form, substance and amount satisfactory to it and as provided by law, in which both the Issuer and the Registrar must be named as obligees. A Note so surrendered to the Registrar will be canceled by the Registrar. If the mutilated, destroyed, stolen or lost Note has already matured or been called for redemption in accordance with its terms it is not necessary to issue a new Note prior to payment.
- x. *Limitation on Transfers.* The Note has been issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and

accordingly a Note may not be assigned or transferred in whole or part, nor may a participation interest in a Note be given pursuant to any participation agreement, except in accordance with an applicable exemption from such registration requirements. In no event may any participation interest in a Note be in an initial principal amount of less than \$100,000.

Section 7. Accounts. There is established at the Lender a bond account into which all payments of the principal of and interest on the Note shall be deposited and immediately credited against the unpaid principal balance of the Note and interest accrued thereon.

Section 8. General Covenants.

- a. *Payment of Principal and Interest.* The principal of and interest on the Note are payable solely from and secured by revenues and proceeds derived from the Note and the Documents, or credited to the Bond Account under Section 7, which revenues and proceeds are specifically pledged to the payment thereof in the manner and to the extent specified herein and in the Note and the Documents; and nothing in the Note or in this Resolution shall be considered as assigning, pledging or otherwise encumbering any other funds or assets of the Issuer.
- b. *Nature of Security.*
 - i. The Note will be a special limited obligation of the Issuer.
 - ii. Notwithstanding anything contained in the Note or the Documents or any other document referred to herein to the contrary, under the provisions of the Act the Note may not be payable from or be a charge upon any funds of the Issuer other than the Bond Account and the revenues and proceeds pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon, nor shall the Note otherwise contribute or give rise to a pecuniary liability of the Issuer or any of the Issuer's officers, employees and agents. Accordingly, the Note shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon.
 - iii. No holder of the Note shall ever have the right to compel any exercise of the taxing power of the Issuer to pay the Note or the interest thereon, or to enforce payment thereof against any property of the Issuer other than the revenues pledged under the Pledge Agreement; and the Note shall not constitute a charge, lien or encumbrance, legal or equitable, upon any funds, assets or property of the Issuer, other than revenues under the Loan Agreement and sums held in the Bond Account; and the Note shall not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness. The Note will not

constitute an indebtedness, a pecuniary liability, a moral or general obligation or a loan of the credit of the Issuer or a charge, lien or encumbrance, legal or equitable, against the Issuer's property, general credit or taxing powers.

- Section 9. Offering and Disclosure Materials. The Issuer has not participated in the preparation of or reviewed any offering or disclosure materials with respect to the offer and sale of the Note and the Issuer makes no representations or warranties regarding the necessity, sufficiency, accuracy, fairness, completeness or adequacy of any disclosure with respect to such offer and sale.
- Section 10. Bank Qualified. In order to qualify the Note as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code, the Issuer makes the following factual statements and representations:
- a. based entirely upon representations of the Borrower and Bond Counsel, the Note, when issued, will be "qualified 501(c)(3) bonds" under Section 145 of the Code;
 - b. the Issuer designates the Note as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code;
 - c. the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which have been or will be issued by the Issuer (and all entities whose obligations will be aggregated with those of the Issuer) during the calendar year in which the Note is issued are not expected to exceed \$10,000,000; and
 - d. not more than \$10,000,000 of obligations issued by the Issuer during the calendar year in which the Note is issued have been designated for purposes of Section 265(b)(3) of the Code.
- Section 11. Subject to DEED Approval. Notwithstanding anything in this Resolution to the contrary, the approvals and authorizations given herein are specifically subject to and contingent upon the receipt of approval of the Project by DEED.
- Section 12. Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or

paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

Section 13. Effective Date. This Resolution shall take effect and be in force from and after its approval.

Adopted: June 7, 2005.

Chair

ATTEST:

County Coordinator

The motion of the adoption of the foregoing Resolution was duly seconded by Commissioner Mosher and, upon vote being taken, the following voted in favor thereof:

Commissioner Block
Commissioner Froemming
Commissioner Lee
Commissioner Mosher
Commissioner Nelson

the following voted against the same: None

the following were absent: None

whereupon, said Resolution was declared duly passed and adopted, and approved and signed by the Chair and attested by the County Coordinator.