

TOWN OF JUPITER



DATE: April 15, 2010

TO: Honorable Mayor and Members of Town Council

FROM: Andrew D. Lukasik, Town Manager

SUBJECT: Approval of a loan guarantee to provide for a \$275,000 loan to CHS Resources, Inc. as recommended by the Economic Development Advisory Board and granting authorization to the Town Manager and Town Attorney to develop the necessary agreements to implement the terms for approval by the Mayor.

EXECUTIVE SUMMARY:

The Economic Development Advisory Board has recommended that the Town Council approve a loan guarantee in the amount of \$275,000 to CHS Resources, Inc.

Company Background: CHS Resources, Inc is a biotechnology product development company focusing on a pharmaceutical treatment for Actinic Keratosis (AK). AK is a very common dermatologic problem. It is a precancerous skin growth generally caused by sun exposure which is usually characterized by rough, red, scaly crusted areas that appear on the outer layer of skin. While not life threatening, if untreated, it can progress to carcinomas that can become fatal.

CHS's application and technologies are unique in that preliminary studies have indicated that Sulindac, when combined, with an oxidizing agent, such as hydrogen peroxide or dichloroacetic acid, not only helps to eradicate the AK, but preferentially targets it, leaving the normal cells unharmed. While the precise mechanism of action is being investigated, CHS believes that its technologies offer significant promise in the growing AK and skin cancer markets. The Company has embarked on a strategy to commercialize its technology: The company will be filing an IND for an Investigational new Drug Application ("**IND**") with the U.S. Food and Drug Administration ("**FDA**") for a topical treatment for AK and other skin cancers.

CHS was formed as a Florida limited liability company in February, 2005 and in October 2005 licensed its technology from FAU Research Corporation, an affiliate of Florida Atlantic University. To date, CHS has raised in excess of \$500,000.00 from its members and a State of Florida Commercialization Research Grant, which has been used for various preliminary studies regarding a treatment for AK.

Financing and Use of Proceeds: The loan of \$275,000 will be matched by private equity investment in the Company. The proceeds from the funding will be used to prepare and file an IND with the FDA with respect to the application of the CHS' product for the treatment of AK and operational costs related to the relocation of the Company.

Loan guarantee provisions include the following:

- Town will guarantee \$233,750 (85%) of a \$275,000 loan.
- The loan will be secured by the assets of CHS Resources.
- CHS must remain in northern Palm Beach County during the term of the loan or repay the loan in full immediately.
- The Town will be granted stock options in CHS equal to 2.5% of the company's total equity for providing the loan guarantee. The exercise price of the stock options will be equal to the price of equity in CHS' next round of fund raising.

RECOMMENDATION:

Approval of a loan guarantee to provide for a \$275,000 loan to CHS Resources as recommended by the Economic Development Advisory Board and granting authorization to the Town Manager and Town Attorney to develop the necessary agreements to implement the terms for approval by the Mayor.

Strategic Priority:

Attachments:

<input type="text" value="Resolution"/>	<input type="text" value="Term Sheet"/>
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Funding Source:

<input checked="" type="checkbox"/>	Approved in Budget	\$ <u>\$233,750</u>	Sources: <u>Economic Development Fund</u>
<input type="checkbox"/>	Additional Funding Required	\$ _____	Sources: _____

RESOLUTION NO. 23-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF JUPITER FLORIDA APPROVING A LOAN GUARANTEE IN AN AMOUNT NOT TO EXCEED \$233,750 FOR A LOAN AMOUNT NOT TO EXCEED \$275,000 FOR CHS RESOURCES, LLC; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Florida Constitution, applicable laws of the State of Florida and the Charter of the Town of Jupiter, Florida (the Charter), authorize and grant the Town Council broad home rule authority to act in the best interests of its citizens; and

WHEREAS, CHS Resources, LLC (CHS) is applying for a business purpose bank loan to expand CHS operations and the Town has agreed to support this application by making funds available to be used as cash collateral for the CHS loan; and

WHEREAS, as part of its commitment to Palm Beach County to be the location of Scripps Florida, the Town has created an Economic Development Advisory Board whose purpose it is to assist businesses in the biotechnology sector to relocate or expand their businesses in Palm Beach County and the Town; and

WHEREAS, the Town's Economic Development Advisory Board has recommended that the Town provide a loan guarantee in an amount not to exceed \$233,750 for CHS loan amount not to exceed \$275,000; and

WHEREAS, the Town Council has determined that it is in the best interest of the Town to accept the Boards recommendation; and

WHEREAS, funds for the loan guarantee would be set aside from the \$3 million contribution the Town Council has previously committed to Palm Beach County in order for the selection of the Town as the location for the Scripps Florida headquarters.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JUPITER, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are true, correct and incorporated into this Resolution.

Section 2. The Town Council hereby agrees to provide a loan guarantee in the amount of \$233,750 for a loan amount not to exceed \$275,000 with a local bank for CHS Resources, LLC in accordance with the Economic Development Advisory Board's recommendation.

Section 3. This Resolution shall take effect immediately upon adoption.

NON-BINDING DRAFT TERM SHEET

OFFERING OF FINANCIAL SUPPORT

**For
CHS Resources, LLC (CHS)
From
Town of Jupiter (TOJ)**

April 2010

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THIS TERM SHEET SUMMARIZES THE PRINCIPAL TERMS OF THE PROPOSED OFFER OF FINANCIAL SUPPORT FROM THE TOWN OF JUPITER. THIS TERM SHEET IS FOR DISCUSSION PURPOSES ONLY; THERE IS NO OBLIGATION ON THE PART OF ANY NEGOTIATING PARTY UNTIL ALL PARTIES SIGN A DEFINITIVE AGREEMENT. THE TRANSACTIONS CONTEMPLATED BY THIS TERM SHEET ARE SUBJECT TO THE SATISFACTORY COMPLETION OF DUE DILIGENCE BY THE TOWN OF JUPITER. THIS TERM SHEET DOES NOT CONSTITUTE EITHER AN OFFER TO SELL OR AN OFFER TO PURCHASE SECURITIES. THIS DOCUMENT IS INTENDED TO SET FORTH THE INTENT OF THE PARTIES AND IS NOT INTENDED TO BE BINDING UPON ANY PARTY OR PERSON.

This term sheet summarizes the principal terms and conditions of a proposed offer of financial support from the Town of Jupiter (the "Offer"). This term sheet is for information purposes only, is submitted to you on a confidential basis, and is solely for discussion purposes. You may use the contents of this term sheet to consider the terms provided and conditions required by the Town of Jupiter related to the Offer. You may not divulge the contents of this term sheet to third parties, except your attorneys, board members, or employees.

The Offer

Form of Offer:	Loan Guarantee
Amount / Term:	\$275,000 loan for a maximum period of 60 months.
Guarantee Amount:	In addition to any financial covenants required by the lender of CHS, the TOJ will provide a cash guarantee of \$233,750 and CHS will provide the remaining \$41,250 as cash or cash equivalents.
Repayment	The Loan will be repaid monthly. The loan will be paid in full at the end of the 60 month term. Terms of repayment may include interest only payments for the first 36 months of the term and interest/principle payments for the remaining 24 months at an interest rate to be determined by the lender of CHS' choice.
Use of Funds:	The investment will be used to fund the development of pharmaceutical treatments for Actinic Keratosis.
Stipulations	<p>The Loan will be secured by all the assets of CHS. The company will execute a UCC-1 confirming the lender's title ownership to the equipment until such time that the loan is repaid in full.</p> <p>CHS shall execute a personal guarantee agreement that shall be a continuing, unconditional, and irrevocable guarantee to repay and indemnify TOJ in the amount equal to the cash guarantee provided. The personal guarantee will not require a minimum net asset threshold to be valid.</p>

	<p>CHS will provide TOJ with appropriate documentation indicating that matching funds equal to the amount of the loan guarantee from TOJ will be met by CHS' investors or other sources before funds are drawn from the loan proceeds. The TOJ will advise the CHS lender of the amount of funds that may be advanced from the approved loan proceeds after CHS has provided documentation that is acceptable to TOJ staff of the existence of the required matching funds.</p> <p>CHS shall be subject to any provisions or stipulations required by the lender.</p> <p>CHS must be located within the boundaries of any of the cities or unincorporated Palm Beach County that constitute "North County" (Jupiter, Palm Beach Gardens, Riviera Beach, Mangonia Park, Lake Park and unincorporated Palm Beach County) during the term of the loan. Failure to meet this obligation will require the Loan to become immediately due and repaid in full.</p> <p>CHS shall deliver a lease or purchase agreement or any documentation found to be adequate by the TOJ to indicate that CHS has secured a physical location in North County in which to operate.</p> <p>Two full time and 2 part time employees will be hired within 3 months of execution of loan documents. Staffing levels are anticipated to increase to a total of 25 persons (full and part time) during the term of the loan. The company will report its progress in hiring with an explanation for any reason why the projected number of hires is not being achieved. Failure to comply will require the Loan to become immediately due and repaid in full.</p>
Management:	The company will maintain the existing members of the Board of Directors. TOJ will be notified of any change in the management of CHS during the term of the loan. CHS is an LLC with Stephen Chakoff as its Managing Member, CHS will maintain Stephen Chakoff as the Managing Member during the term of the loan and keep the Scientific Advisory Board intact.
Change in Control:	In the event of a change in control, the Loan may, in the sole discretion of the TOJ become immediately due and repaid in full.
Information Rights:	CHS will provide all required documents for due diligence and regular loan covenant review to the lender.
Expenses:	The TOJ will pay for its own legal and related fees for creation of the final agreement and the issuance loan guarantee. APPL will pay for all legal and accounting fees that it incurs for advice related to this Offer.
Lender:	CHS may negotiate the terms of the loan with a lender of its choosing. The TOJ has a list of lenders it has discussed similar transactions as a tool to assist CHS in selecting a lender.
Final Agreement:	Following agreement in principal to these terms, the TOJ will request a law firm of its own choosing to draft a Final Agreement which incorporate the terms outlined herein as well as all other terms and indemnifications required by the TOJ.
Equity Participation:	The TOJ will be granted stock options in CHS equal to 2.5% of the equity in CHS at the time of consummation of the loan for providing the loan guarantee. Value of the stock options will be equal to the exercise price at CHS's next round of fund raising.
Financial Reporting:	CHS shall furnish to the TOJ the following financial information, in each instance prepared in accordance with generally accepted accounting principles consistently applied and

	<p>otherwise in form and substance satisfactory to the TOJ:</p> <p>1) <u>Annual Financial Statements</u>: CHS shall deliver to the TOJ, within 120 days after the close of each fiscal year, financial statements that reflect its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules.</p> <p>2) <u>Budget/Projections</u>: CHS shall deliver to the TOJ current budget and projection statements as soon as available and in any event within 30 days after the close of each fiscal quarter; all in reasonable detail.</p>
Project Reporting:	CHS shall provide semi-annual reports advising the TOJ of the status of the project for which funding has been provided as described in the application for funding. Reports should include a discussion of sales projections and actual sales results, project milestones achieved and missed, project setbacks and revised timetables.
Closing Conditions:	CHS will be obligated to: (i) provide financial information as requested by the TOJ or the Lender, (ii) obtain all required consents and approvals from its shareholders, partners, or directors, (iii) affirm that their business is in compliance with all federal and state laws that are applicable to the CHS's business, (iv) attest to being authorized to execute the final agreement, and (v) execute the final agreement.