

SALES TAX AGENCY AGREEMENT

November 1, 2017

ATHENEX, INC.
1001 Main Street Suite 600
Buffalo, NY 14203

Re: County of Chautauqua Industrial Development Agency
ATHENEX, INC.

Ladies and Gentlemen:

The County of Chautauqua Industrial Development Agency (the “Agency”) and ATHENEX, INC. (the “Company”) agree as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Chautauqua County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on July 25, 2017 (the “Authorizing Resolution”) and a Project Agreement, dated as of November 1, 2017 (as amended, modified, supplemented or restated, the “Project Agreement”), between the Agency and the Company, the Agency has authorized the Company to act as its agent to acquire, construct, install and equip a commercial facility in Chautauqua County, New York, consisting of (1) a project site of approximately 33.6 acre parcel of vacant land located at 3805 Lake Shore Drive East, Dunkirk, County of Chautauqua, New York (the “Land”), (2) the construction of an approximately 320,000 square foot building (the “Building”) on the Land with potential parking,

landscaping and related improvements to the Land (together with the Building, the "Facility"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Applicant as a biopharmaceutical manufacturing facility (collectively, the "Project Facility").

3. As agent for the Agency, the Company agrees that each contract, agreement, lease, invoice, bill or purchase order entered into by the Company as agent for the Agency in connection with the acquisition, construction, installation or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by [_____] (the "Agent"), as approved agent for and on behalf of the County of Chautauqua Industrial Development Agency (the "Agency") in connection with a certain project (the "Project") of the Agency for Athenex, Inc. (the "Company") consisting in part of the acquisition, construction, installation and equipping of a pharmaceutical manufacturing and distribution facility located at 3805 Lake Shore Drive East, Dunkirk, New York 14048 (the "Premises") and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Chautauqua if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

4. The acquisition of capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project Facility (collectively, the "Property") shall be exempt from sales and use taxes levied by the State of New York and the County of Chautauqua on the condition that (i) such items of Property are separately identifiable property of the Agency, and

(ii) each item of Property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company. The exemption provided pursuant to Section 8.12 of the Project Agreement shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, or lawns, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.

5. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to Section 8.12 of the Project Agreement, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

6. By execution of its acceptance of the terms of this Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Agreement by the Company is and will be strictly for the purposes above stated.

7. Until the earliest of (i) December 31, 2021, (ii) the completion of the Project as provided in the Project Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Project Agreement), or (iv) the termination of the Project Agreement and/or revocation of the appointment of the Company as agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on a Form ST-123 (as defined in Paragraph 11 hereof) prepared by the Company or sub-agent and issued to such vendor, lessor, licensor, contractor or subcontractor pursuant to Paragraph 11 hereof as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company, as agent for the Agency, are exempt from all New York State and Chautauqua County sales and use taxes.

8. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Agreement and the Form ST-123 issued by the Company or sub-agent to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Company.


9. This Agreement and the Form ST-123 issued by the Company or sub-agent to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Agreement or the issuance of such Form ST-123.

10. The exemption from sales and use taxes provided under the Project Agreement is granted subject to the requirements of Section 875 of the General Municipal Law, which requirements are incorporated herein by reference, and the Company agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

11. The Company agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate* (each, a "Form ST-123"), to each vendor, lessor, licensor, contractor or subcontractor from which the Company purchases and/or leases Property, or with which the Company enters into an improvement or installation contract relating to the acquisition, construction, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company as agent for the Agency pursuant to Section 4.1(E) of the Project Agreement, are exempt from all New York State and Chautauqua County sales and use taxes. The Company agrees to provide the Agency with a copy of each such Form ST-123 within ten (10) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Richard Dixon
Title: Chief Financial Officer

ACCEPTED AND AGREED TO BY:

ATHENEX, INC.

By: 
Name: Johnson Y.N. Lau
Title: Chief Executive Officer

