

A regular meeting of the County of Chautauqua Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 201 West Third Street, Jamestown, County of Chautauqua, New York, on July 25, 2017, at 10:00 A.M. local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Michael Metzger	Chairman
Hans Auer	Treasurer
Kim Peterson	Secretary
David Bryant	Member
George Borrello	Member
Brad Walters	Member
Kelly Farrell DuBois	Member

ABSENT:

Dennis Rak	Vice Chairman
Cory Duckworth	Member

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Kevin M. Sanvidge	Administrative Director/CEO
Richard E. Dixon	Chief Financial Officer
Gregory L. Peterson, Esq.	Counsel
Matthew R. Mazgaj, Esq.	Counsel

The attached **Resolution No. 07-25-17-03** was offered by George Borrello, seconded by David Bryant.

Resolution No. 07-25-17-03

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR ATHENEX, INC.

WHEREAS, the County of Chautauqua Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Athenex, Inc. a publicly held corporation incorporated under the laws of the state of Delaware and qualified to do business in the State of New York as a foreign business corporation (the "Applicant"), presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest, by sublease, in an approximately 33.6 acre parcel of vacant land located at 3799 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"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility back to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the

Project following a determination by the Agency that (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project (collectively, "Applicable Laws"); and

WHEREAS, after receiving the Application, the Transactions Committee of the Agency met on July 6, 2017 and passed a motion that approved the Application and authorized the Agency to proceed with conducting due diligence and fulfilling preliminary requirements toward approval of the requests in the Application by the Agency; and

WHEREAS, the members of the Transactions Committee of the Agency passed another motion on July 6, 2017 authorizing Kristine Morabito, Business Development Manager for the Agency to send notifications for public hearings and deviation hearings; and

WHEREAS, the Business Development Manager of the Agency, on behalf of the Agency, (A) caused notice of the public hearings of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on July 6, 2017 to the chief executive officer of the County of Chautauqua, New York (the "County") and of each other affected tax jurisdiction within which the Project Facility is or is to be located; (B) caused notice of the Public Hearing to be published on July 8, 2017 in the *Observer*, a newspaper of general circulation available to residents of the Town of Dunkirk and the County; (C) conducted the Public Hearing in the Town of Dunkirk at the Town of Dunkirk Town Hall Meeting Room, 4737 Willow Road, Dunkirk, New York; and (D) prepared a report of the Public Hearing (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, the Business Development Manager of the Agency, on behalf of the Agency, (A) caused notice of a meeting of the Agency (the "IDA Meeting") with respect to a proposed deviation from the Agency's uniform tax exemption policy and guidelines to be mailed on July 6, 2017 to the chief executive officer of each affected tax jurisdiction; and (B) conducted the IDA Meeting on July 25, 2017 and reviewed and responded to any comments or correspondence received from the affected tax jurisdictions at or before the IDA Meeting regarding the proposed deviation from the Agency's uniform tax exemption policy and approved the proposed deviation prior to the adoption of this Resolution; and (C) the members of the Agency passed a resolution at that IDA Meeting authorizing a deviation from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, the Agency has lawfully performed, completed and complied with all of its obligations in connection with the Project pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), including, but not limited to, issuing its Statement of Findings with Determination of Significance for the Project; and

WHEREAS, the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) was Lead Agency for the Project and undertook a coordinated review pursuant to 6 NYCRR 617.6(b)(3) of the Regulations; and

WHEREAS, the Project was thoroughly evaluated as part of a comprehensive coordinated environmental review conducted by ESD which included a complete review of (1) Part 1 of the Full Environmental Assessment Form dated March 3, 2017; (2) Parts II and III of the Full Environmental Assessment Form dated April 10, 2017; and (3) other supporting documentation; and

WHEREAS, as Lead Agency, on April 17, 2017, ESD issued for its determination of significance, a negative declaration, finding that the Project, a Type I action, would not have any significant adverse environmental impacts;

WHEREAS, the Agency participated in the coordinated review process and received copies of all notices and findings and is, therefore, bound by the Lead Agencies determination; and acknowledged and concurred with the determination and passed a resolution on the date hereof to that effect.

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the Financial Assistance, subject to the terms hereof; and

WHEREAS, Fort Schuyler Management Corporation a State University of New York (SUNY Polytechnic Institute) affiliated, private, not-for-profit, 501(c)(3) corporation (“FSMC”) will own the Project Facility and has leased the Project Facility to the Applicant and the Applicant has provided or will provide a copy of that lease to the Agency; and

WHEREAS, FSMC has submitted or will submit to the Agency its written consent to the Applicant’s request for financial assistance from the Agency and the Applicant’s sub-lease of the Project Facility to the Agency; and

WHEREAS, the Applicant will (A) execute and deliver a certain Project Agreement (the “Project Agreement”) between the Agency and the Applicant, pursuant to which the Applicant shall be named an agent of the Agency, permitting its use of a Sales Tax and Use Letter and ST-60; thereafter, (B) execute and deliver a certain Company Lease Agreement (the “Company Lease”) between the Agency and the Applicant, pursuant to which the Applicant will grant to the Agency a sub-leasehold interest in the Project Facility; (C) execute and deliver a certain Agency Lease Agreement (the “Agency Lease”) between the Agency and the Applicant, pursuant to which the Agency will grant to the Applicant a sub-subleasehold interest in the Project Facility; (D) execute and deliver a certain Payment in Lieu of Taxes Agreement (the “PILOT Agreement”) between the Applicant and the Agency; and (E) execute and deliver certain other certificates, documents, instruments and agreements related to the Project (together with the Company Lease, Agency Lease, and the PILOT Agreement, collectively, the “Transaction Documents”); and

WHEREAS, the members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act (which terms and conditions are hereby incorporated herein) and the duties and obligations of the Agency thereunder with respect to the granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency has reviewed the Application and the Report and, based upon the representations made by the Applicant to the Agency, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Project, and an analysis of how the Project contributes to the realization of the public purposes of promoting employment opportunities in the County and the prevention of economic deterioration in the County, the Project will constitute a commercial facility with a significant impact on the area in which it is situated, and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the County. Therefore, the Project constitutes a "project" within the meaning of the Act;

(b) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Applicant to undertake the Project in the County;

(c) the completion of the Project Facility, the sublease thereof by the Agency to the Applicant and the operation thereof by the Applicant will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other occupant or user located within the State (but outside of the County);

(d) the Project will serve the public purposes of the Act by increasing the overall number of permanent, private sector jobs in the State;

(e) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(f) the Project does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to

customers who personally visit such facilities constitute more than one-third of the total cost of the Project; and

(g) the granting of the Financial Assistance by the Agency with respect to the Project will encourage and assist the Applicant in undertaking the Project in the County, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County and the State and improve their standard of living, and thereby serve the public purposes of the Act.

Section 2. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Administrative Director and the staff of the Agency with respect to the Application and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP as Counsel to the Agency with respect to all matters in connection with the Project.

Section 3. The Agency hereby determines that the Agency has fully complied with the requirements of the Act and all other Applicable Laws that relate to the Project and hereby directs the officers, employees and agents of the Agency to comply with Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to the granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) and hereby directs Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 4. Having considered fully all comments received at or in connection with the Public Hearing, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance, subject to the terms hereof.

Section 5. The Agency hereby approves the Applicant as an agent of the Agency under the Project Agreement and the Applicant as the recipient of the Sales Tax Financial Assistance.

Section 6. The Agency hereby approves the Applicant as the sub-sublessee under the Agency Lease with the Agency and the Applicant as the recipient of the Property Tax Financial Assistance.

Section 7. The Agency is hereby authorized to (a) acquire an interest in the Project Facility pursuant to the Company Lease and the other Transaction Documents, (b) grant a subleasehold interest in the Project Facility pursuant to the Agency Lease and the other Transaction Documents, (c) grant the Financial Assistance, and (d) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 8. The form and substance of the Transaction Documents, in the forms presented to the members of the Agency, together with such non-material changes as the Chairman, the Vice Chairman, the Administrative Director or the Chief Financial Officer may

hereafter deem necessary or appropriate, are hereby approved. The Chairman, the Vice Chairman, the Administrative Director and the Chief Financial Officer are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Transaction Documents to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 9. The Chairman, the Vice Chairman, the Administrative Director and the Chief Financial Officer of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Agency Lease) of the Agency.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Amendments, to execute and deliver all such additional certificates, instruments, agreements and documents, to pay all such fees, charges and expenses, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Amendments to which the Agency is a party or which are binding on the Agency.

Section 11. The Chairman, the Vice Chairman, the Administrative Director and the Chief Financial Officer of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 12. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Michael Metzger	VOTING	AYE
Dennis Rak	VOTING	ABSENT
Hans Auer	VOTING	AYE
Kim Peterson	VOTING	AYE
David Bryant	VOTING	AYE
Cory Duckworth	VOTING	ABSENT
George Borrello	VOTING	AYE
Brad Walters	VOTING	AYE
Kelly Farrell DuBois	VOTING	AYE

The foregoing Resolution was thereupon declared duly adopted.

