

**COPY**

FIRST AMENDMENT TO AGENT AND FINANCIAL  
ASSISTANCE PROJECT AGREEMENT

THIS FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, dated as of October 23, 2019, is by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **MOOG INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 400 Jamison Road, East Aurora, New York 14052 (the "Company").

WITNESSETH:

WHEREAS, MOOG INC., AND/OR INDIVIDUAL(S) OR AFFILIATES, SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (the "Company") submitted an application to the Agency (the "Original Application") requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) a leasehold interest in parcels of land located at 400 Jamison Road, Town of Elma, Erie County, New York (the "Land") to be improved thereon with additions to Plants 1 and 3 totaling 95,000+/- SF (the "Improvements") to be utilized for manufacturing/processing, research & development and office space, and (ii) the leasing, acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment," and collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, by resolution adopted on March 22, 2017 (the "Original Resolution"), the Agency authorized financial assistance to the Company with respect to the Original Application in the form of (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility, and (b) a partial abatement from real property taxes benefit through a ten (10) year term PILOT Agreement for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption benefit and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, based upon representations and warranties made by the Company in the Original Application, the Agency, within the terms of the Original Resolution, authorized and approved the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$18,000,000.00, which results in New York State and local sales and use tax exemption benefits not to exceed \$1,575,000.00, and required the Company to evidence that the total investment actually made with respect to the Project, at the time of Project completion, equals or exceeds \$27,710,000.00 (which represented the product of 85% multiplied by \$32,600,000.00 (being the total Project cost as stated in the Original Application for Financial Assistance at that point in time); and

WHEREAS, the Agency and the Company entered into that certain Agent Agreement, dated as of May 18, 2017, as may be amended from time to time, (collectively, the "Agent Agreement"), whereby the Agency authorized the Company to act as its Agent for the purposes of acquiring, constructing and/or equipping the Facility; and

WHEREAS, as stated with the Company's Original Application, the "Company represented therein that its then current number of jobs at the proposed location consisted of 251 full time positions, and the total full time jobs to be created totaled 42 new full time positions; and

WHEREAS, the Agency received notification from the Company dated September 29, 2017 (the "Notification") that upon collecting data needed to complete its second quarter, 2017 employment survey, that the Company's listed number of full time jobs at Original Application, represented to be 251 positions by the Company as stated on its Original Application, was not accurate and as such, the Company requested that the Original Resolution be amended to reflect 288 full time positions, instead of 251 full time positions, at the time of Original Application; and

WHEREAS, the Company and the Agency desired to amend the Original Resolution to reflect that the Company had 288 full time employees located at the Project location at the time of Original Application; and

WHEREAS, the Agency, on October 25, 2017, amended the Original Resolution and approved a certain First Amendatory Inducement Resolution with respect to the number of full time employees located at the Project location at the time of the Original Application and amended Section 3(ii) of the Original Resolution in its entirety to read as follows:

(ii) Employment Commitment - that there are at least 288 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and

- the number of current FTE employees in the then current year at the Facility; and
- that within two years after Project completion the Company has maintained and created FTE employment at the Facility equal to 324 FTE employees, being the sum of Baseline FTE and 36 [representing the product of 85% multiplied by 42 (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company's application for Financial Assistance)]. In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide on a quarterly basis employment data to the Agency, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.

WHEREAS, on September 18, 2019, the Agency received an amended application (the "Amended Application") from the Company requesting additional Financial Assistance due to extraordinary costs associated with the construction of the additions to Plants 1 and 3 and brownfield remediation costs of the Project, and specifically requesting to make additional purchases of goods and services relating that would otherwise be subject to New York State and local sales and use tax in an amount up to \$6,000,000.00, which results in additional New York State and local sales and use tax exemption benefits not to exceed \$525,000.00; and

WHEREAS, by resolution adopted on October 23, 2019 (the "Second Amendatory Inducement Resolution"), the Agency: (i) authorized and approved an amended Sales Tax Exemption benefit as described herein and further, specifically authorized and approved the Company, as its agent, to make purchases of goods and services relating to the Project, as amended (now, the "Amended Project") and that would otherwise be subject to New York State and local sales and use tax in an estimated amount up to \$24,000,000.00 (being the sum of \$18,000,000.00 as proposed in the Original Application and \$6,000,000.00 as proposed in the Amended Application), which may result in New York State and local sales and use tax exemption benefits not to exceed \$2,100,000.00 (being the sum of \$1,575,000.00 as proposed in the Original Application and \$525,000.00 as proposed in the Amended Application); and (ii) authorized the Investment Commitment material term to be increased to require that the total investment actually made with respect to the Amended Project at the time of the Amended Project completion equals or exceeds \$37,655,000.00, which represents the product of 85% multiplied by \$44,300,000.00 (being the total Amended Project cost as stated in the Company's Amended Application for Financial Assistance); and

WHEREAS, to reflect and confirm the foregoing, the Agency requires a First Amendment to Agent Agreement be executed.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

The Agent Agreement is amended as follows:

1. Section 2(g)(5)(a) is replaced in its entirety to read as follows:
  - (a) Investment Commitment - the total investment actually made with respect to the Amended Project at the time of the Amended Project completion equals or exceeds \$37,655,000.00 [which represents the product of 85% multiplied by \$44,300,000.00 (representing the total project cost as stated in the Company's Amended Application for Financial Assistance)]; and
2. Section 2(g)(5)(b) is replaced in its entirety to read as follows:
  - (b) Employment Commitment - that there are at least 288 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and

- the number of current FTE employees in the then current year at the Facility; and
- that within two years after Project completion the Company has maintained and created FTE employment at the Facility equal to 324 FTE employees, being the sum of Baseline FTE and 36 [representing the product of 85% multiplied by 42 (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company's application for Financial Assistance)]. In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data on a quarterly basis to the Agency, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.
- In order to certify and verify the foregoing the Company shall provide to the Agency, a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Exhibit F contains the form of annual certification as so required.

3. Section 2(g)(5)(h) is replaced in its entirety to read as follows:

(h) In accordance with the Original Application, Original Resolution, the Amended Application, the Second Amendatory Inducement Resolution, and the cost-benefit analysis, the Company further: (i) covenants that the purchases of goods and services relating to the Amended Project and subject to New York State and local sales and use taxes shall be in an amount estimated up to \$24,000,000.00 (being the sum of \$18,000,000.00 as proposed in the Original Application of the Project and \$6,000,000.00 as proposed within the Amended Application of the Project), and therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$2,100,000.00 (representing the sum of \$1,575,000.00 being the sales and use tax exemption benefit as related to the Original Application of the Project and \$525,000.00 being the sales and use tax exemption benefit as related to the Amended Application of the Project); and (ii) confirms that real property tax abatement benefits to be provided to the Company over the term of the PILOT Agreement, said PILOT Agreement attached hereto as Exhibit G if executed or to be attached hereto as Exhibit G immediately upon its execution, are estimated to be approximately \$684,000.00.

4. Section 4 Insurance Required is replaced in its entirety by the attached current Agency's Insurance Specifications dated November 1, 2018, and any amendments thereto as may be required by the Agency.
5. Any references to the sales tax exemption expiration in the Agent Agreement shall be changed from **December 31, 2019** to **December 31, 2020**.

Unless otherwise amended pursuant to the terms contained herein, the terms of the Agent Agreement shall remain unchanged.

*[The Balance of this Page Intentionally Left Blank]*

[Signature/Acknowledgment Page to the First Amendment to Agent and Financial Assistance Project Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this First Amendment to Agent and Financial Assistance Project Agreement to be executed in their respective names, all as of the date first above written.

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By: Karen M. Fiala  
Name: Karen M. Fiala  
Title: Assistant Treasurer

**MOOG INC.**

By: [Signature]  
Name: Timothy P. Balkin  
Title: Treasurer

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

On the 6 day of December, 2019, before me, the undersigned, personally appeared **KAREN M. FIALA**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Dawn M. Boudreau  
Notary Public

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

DAWN M. BOUDREAU  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires May 27, 2023

On the 17th day of December, 2019, before me, the undersigned, personally appeared **TIMOTHY P. BALKIN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

CHANTEL BURNS  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires April 7, 2023

[Signature]  
Notary Public



Department of Taxation and Finance

# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

**ST-60**  
(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

**IDA Information**

Name of IDA <b>Erie County Industrial Development Agency</b>			IDA project number (use OSC numbering system for projects after 1998) <b>1404-17-05A</b>
Street address <b>95 Perry Street, Suite 403</b>			Telephone number <b>(716 ) 856-6525</b>
City <b>Buffalo</b>	State <b>NY</b>	ZIP code <b>14203</b>	Email address (optional)

**Project operator or agent information**

X	Name of IDA project operator or agent		Mark an <b>X</b> in the box if directly appointed by the IDA: <b>No</b> <input type="checkbox"/>	Employer identification or Social Security number	X
	Street address		Telephone number ( )	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
	City	State	ZIP code	Email address (optional)	

**Project information**

Name of project <b>Moog Inc.</b>			
Street address of project site <b>400 Jamison Road, and any lands located in Erie Co. and occupied by license or easement during construction or improvement by third parties for the benefit of the project.</b>			
City <b>Elma</b>	State <b>NY</b>	ZIP code <b>14059</b>	Email address (optional)
Purpose of project <b>Construction and equipping of additions to Plants 1 and 3 totaling 95,000+/- SF to be utilized as manufacturing/processing, research and development and office space, and the acquisition and installation of certain items of machinery, equipment and other tangible personal property.</b>			

Description of goods and services intended to be exempted from New York State and local sales and use taxes <b>Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after the completion of the project, or the item is geographically located outside the legal boundaries of the project facility; provided there is a reasonable basis to acquire the item to benefit the project.</b>			
Date project operator or agent appointed (mmdyy) <b>051817</b>	Date project operator or agent status ends (mmdyy) <b>123120</b>	Mark an <b>X</b> in the box if this is an extension to an original project: and increase <input checked="" type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: (all agents, all in) <b>\$ 24,000,000.00</b>		Estimated value of New York State and local sales and use tax exemption provided: (all agents, all in) <b>\$ 2,100,000.00</b>	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA <b>Karen M. Fiala</b>		Print title <b>Assistant Treasurer</b>	
Signature <i>Karen M. Fiala</i>	Date <b>10-23-2019</b>	Telephone number <b>( 716 ) 856-6525</b>	

## Instructions

### When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

### Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

### If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866**

**Private delivery services** – See Publication 55, *Designated Private Delivery Services*.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service



New York State Department of Taxation and Finance

Exhibit B-1

ST-123 (2/14)

New York State Sales and Use Tax

IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities, for more information.

Table with seller and agent information including Name of seller, Street address, City, town, or village, State, ZIP code, Name of agent or project operator, and Agent or project operator sales tax ID number.

Mark an X in one: [ ] Single-purchase certificate [ ] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Table with project details including Name of IDA (Erie County Industrial Development Agency), Name of project (Moog Inc.), IDA project number (1404-17-05A), Street address (400 Jamison Road), City (Elma), State (NY), ZIP code (14059), and dates of appointment and status ending.

Exempt purchases

(Mark an X in boxes that apply)

- Options A, B, and C for exempt purchases: A. Tangible personal property or services... B. Certain utility services... C. Motor vehicle or tangible personal property...

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document...

Signature and Date fields for the purchaser or purchaser's representative.

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



**Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082



# IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, for more information.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village	City, town, or village
State	State
ZIP code	ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an X in one:  Single-purchase certificate  Blanket-purchase certificate (valid only for the project listed below)

**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

### Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA Erie County Industrial Development Agency		
Name of project Moog Inc.	IDA project number (use OSC number) 1404-17-05A	
Street address of project site 400 Jamison Road (Plants 1 and 3)		
City, town, or village Elma	State NY	ZIP code 14059
Enter the date that you were appointed agent or project operator (mm/dd/yy) ..... 05 / 18 / 17	Enter the date that agent or project operator status ends (mm/dd/yy) ..... 12 / 31 / 20	

### Exempt purchases

(Mark an X in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
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**Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082