

**RESOLUTION APPOINTING CONTRACTOR AS AGENT
555-ONE, LLC PROJECT**

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session in the 3rd Floor Conference Room at the Quackenbush Building located at 333 Broadway in the City of Troy, Rensselaer County, New York on December 8, 2016 at 4:00 o'clock p.m., local time.

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

PRESENT:

John H. Clinton, Jr.	Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
Michael Della Rocco	Member

ABSENT:

Sandra Brown	Vice Chairman
James Church	Member

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robert L. Pasinella, Jr.	Executive Director
Robin LaBrake	Assistant
Peter R. Kehoe, Esq.	Agency Counsel
George W. Cregg, Jr., Esq.	Special Counsel

The following resolution was offered by Michael Della Rocco, seconded by Ronald Bounds, to wit:

Resolution No. 1216-04

RESOLUTION APPOINTING U.W. MARX, INC. AS SUBAGENT OF RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY FOR THE PURPOSE OF UNDERTAKING AND COMPLETING THE 555-ONE, LLC (THE "COMPANY") PROJECT.

WHEREAS, Rensselaer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws 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 128 of the 1974 Laws of New York, as amended, constituting Section 903-d 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 manufacturing, warehousing, research, commercial and industrial 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, on November 22, 2016 (the "Closing"), the Agency granted certain financial assistance to 555-One, LLC (the "Company") in connection with a project (the "Project"), said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 148,000 square foot parcel of land located at 555 Broadway (being a portion of tax map no. 143.52-1-1.1) in the City of Rensselaer, Rensselaer County, New York (the "Land"), (2) the construction on the Land of an approximately 140,000 square foot building and eight (8) garages (collectively, the "Facility") and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property, including without limitation, tenant improvement and finish (collectively, the "Equipment") (the Land, the Facility, and the Equipment being collectively referred to as the "Project Facility"); all of the foregoing to constitute an approximately 96 unit market rate apartment complex and any other directly and indirectly related activities; (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 from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to a lease agreement dated as of November 1, 2016 (the "Lease Agreement") by and between the Agency and the Company; and

WHEREAS, pursuant to correspondence dated November 29, 2016 (the "Request") attached hereto as Exhibit A, the Agency has been requested by the Company to appoint U. W. Marx, Inc. (the "Contractor") as subagent of the Agency in order for the Contractor to undertake and complete the Project Facility; and

WHEREAS, in connection with the appointment of the Contractor as subagent, the Contractor will enter into an agency and indemnification agreement dated as of December 1, 2016 (the "Agency and Indemnification Agreement") and a recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Contractor and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes;

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

Section 1. Based upon an examination of the Request, the Agency hereby determines that the Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(20), and therefor that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

Section 2. Subject to (A) receipt by the Agency of insurance certificates indemnifying the Agency, (B) execution and delivery of the Agency and Indemnification Agreement and the Section 875 GML Recapture Agreement by the Agency and the Contractor, (C) payment by the Contractor of all fees and expenses of the Agency in connection with the delivery of the Agency and Indemnification Agreement and the Section 875 GML Recapture Agreement, including the fees of Agency Counsel and

Special Counsel, the Agency hereby (A) agrees to the appointment of the Contractor as a subagent to undertake and complete the Project and (B) determines to (i) execute a sales tax exemption letter in connection therewith and (ii) enter into the Agency and Indemnification Agreement, the Section 875 GML Recapture Agreement and any other documents or certificates required in connection with said appointment (collectively, the "Subagent Documents"), the form and substance of which the Chairman or Vice Chairman of the Agency is authorized to negotiate and approve.

Section 3. Subject to the satisfaction of the requirements of Section 2 hereof, the Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Subagent Documents, 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, all in the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed 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 Subagent Documents, and to execute and deliver all such additional certificates, instruments 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, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Subagent Documents binding upon the Agency.

Section 5. 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:

John H. Clinton, Jr.	VOTING	YES
Sandra Brown	VOTING	ABSENT
Cynthia A. Henninger	VOTING	YES
Ronald Bounds	VOTING	YES
Douglas Baldrey	VOTING	YES
James Church	VOTING	ABSENT
Michael Della Rocco	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned (~~Assistant~~) Secretary of Rensselaer County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein held on December 8, 2016 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 8th day of December, 2016.


(~~Assistant~~) Secretary

(SEAL)

EXHIBIT A
THE REQUEST

Squires, Allison

To: Zeigler, Nadene
Subject: RE: RCIDA/555-One - RE: IDA Tax exempt certificate and procedure

From: Keith Halpin [mailto:KHALPIN@UWMARX.COM]
Sent: Tuesday, November 29, 2016 2:11 PM
To: Zeigler, Nadene <NZeigler@hodgsonruss.com>
Cc: Mickki Harrington <harrington@psgglaw.com>; RLaBrake@renesco.com; Pamela Harbour <pharbour@uwmarx.com>
Subject: RE: RCIDA/555-One - RE: IDA Tax exempt certificate and procedure

Nadene,

After discussing this with our CPA firm,, we would like the IDA to appoint U.W. Marx, Inc. as a sub-agent in respect to this project. Let me know if this email is sufficient or whether you require a letter. Thank you!

Keith

From: Zeigler, Nadene [mailto:NZeigler@hodgsonruss.com]
Sent: Monday, November 14, 2016 10:21 AM
To: Pamela Harbour
Cc: Jeff West; Keith Halpin; Mickki Harrington; LaBrake, Robin (RLaBrake@renesco.com)
Subject: RE: RCIDA/555-One - RE: IDA Tax exempt certificate and procedure

Good morning Pamela:

No, the ST-60 is not a sub-agent appointment form. Per the sales tax exemption letter, "A contractor or subcontractor not appointed as agent or project operator of the Agency 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)."

And further, pursuant to Section 875(5) of the Act, the Company may not utilize the ST-60 as the basis to make any purchase exempt from sales tax, and that use of the ST-60 in such manner will both (A) subject the Company to civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax as provided in the tax law and (B) be deemed to be, under articles twenty-eight and thirty-seven of the New York State tax law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax. The Company is required to utilize Form ST-123 to obtain the sales tax exemption.

The IDA can directly appointment U.W. Marx, as its sub-agent with respect to this project. If you want the IDA to do so, please request in writing, the IDA will then consider the sub-agent appointment at its meeting this Thursday, Nov. 17, by resolution. If adopted, U.W. Marx will then need to enter into an agency and indemnification agreement and a Section 875 recapture agreement with the IDA and also provide insurance.

Nadene E. Zeigler
Partner
Hodgson Russ LLP

Tel: 518.465.2333
Fax: 866.505.9238



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From: Pamela Harbour [<mailto:pharbour@uwmarx.com>]
Sent: Friday, November 11, 2016 3:53 PM
To: Zeigler, Nadene <NZeigler@hodgsonruss.com>
Cc: Jeff West <jwest@uwmarx.com>; Keith Halpin <KHALPIN@UWMARX.COM>
Subject: RE: RCIDA/555-One - RE: IDA Tax exempt certificate and procedure

Nadene,

In reference to the tax exempt form we got the form assigning 555-ONE as agent. Can 555-ONE appoint their subcontractor, U.W. Marx Inc., as an agent with the use of an ST-60 which would then allow them to use the ST-123 form. The ST-120.1 form does not seem to afford the same tax savings advantages as the IDA ST-123 form. If so, can U.W. Marx then do the same with their subcontractors?

I am just trying to understand the trickle down

Pam Harbour

U.W. Marx Inc
20 Gurley Ave
Troy, NY 12182
Phone 518-272-2541 Ext 124
Fax 518-272-1196

From: Zeigler, Nadene [<mailto:NZeigler@hodgsonruss.com>]
Sent: Thursday, November 03, 2016 4:56 PM
To: Jeff West
Cc: Micki Harrington
Subject: RCIDA/555-One - RE: IDA Tax exempt certificate and procedure

Good afternoon Jeff:

Per the attached signed sales tax exemption letter:

"A contractor or subcontractor not appointed as agent or project operator of the Agency 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)."

I have attached the Form ST-120.1 for your reference.

Please let me know if you need anything further.

Nadene E. Zeigler
Partner
Hodgson Russ LLP

Tel: 518.465.2333
Fax: 518.505.9238



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From: Jeff West [<mailto:jwest@uwmarx.com>]
Sent: Thursday, November 3, 2016 4:20 PM
To: Zeigler, Nadene <NZeigler@hodgsonruss.com>
Subject: IDA Tax exempt certificate and procedure

Nadine

In reference to the tax exempt form we got the form assigning 555-ONE as agent. My question is what form do we give to UW Marx and in turn to the sub contractors for Marx's sub contractors and suppliers?

Thanks

Jeff West
V.P. U.W. Marx, Inc.
20 Gurley Ave.
Troy, New York 12182

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email jwest@uwmarx.com

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