

Oneida Nation

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Oneida, WI 54155

BC Resolution # 02-22-17-E

Adoption of Amendments to the Oneida Seven Generations Corporate Charter

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Oneida Seven Generations Corporation (“OSGC”) was issued a tribal charter, which has been amended from time to time, by the Oneida Business Committee by adoption of resolution # BC-12-04-1996-B; and
- WHEREAS,** on March 1, 2011, the City of Green Bay (the “City”) approved a conditional use permit (“CUP”) sought by a subsidiary of OSGC, Green Bay Renewable Energy, LLC (“GBRE”), to operate a waste-to-energy facility on property located in the City; and
- WHEREAS,** on October 16, 2012, the City wrongfully revoked the CUP; and
- WHEREAS,** on November 14, 2012, OSGC and GBRE commenced litigation against the City to protest the wrongful revocation of the CUP (the “State Court Lawsuit”); and
- WHEREAS,** on November 19, 2012, OSGC and GBRE sent a Notice of Claim to the City, advising the City that its wrongful revocation of the CUP had caused damages to OSGC and GBRE; and
- WHEREAS,** on March 25, 2014, the Wisconsin Court of Appeals issued an opinion in the State Court Lawsuit finding that the City’s revocation of the CUP was wrongful and arbitrary; and
- WHEREAS,** the City refused to re-issue the CUP in light of the Wisconsin Court of Appeals decision, and instead chose to appeal to the Wisconsin Supreme Court; and
- WHEREAS,** on May 29, 2015, the Wisconsin Supreme Court affirmed the decision of the Wisconsin Court of Appeals in the State Court Lawsuit; and
- WHEREAS,** by the time the Wisconsin Supreme Court affirmed the Court of Appeals decision in the State Court Lawsuit, the waste-to-energy project was no longer economically viable; and
- WHEREAS,** OSGC and GBRE thereafter attempted to negotiate a settlement with the City for the damages caused to OSGC and GBRE by the wrongful revocation of the CUP; and
- WHEREAS,** on December 15, 2013, the Oneida General Tribal Council directed the Oneida Business Committee to dissolve OSGC (the “2013 GTC Motion”); and

- WHEREAS,** the Oneida Business Committee began the process of dissolution of OSGC by adoption of amendments to its corporate charter, through resolution # BC-12-24-13-A (the “2013 Resolution”), which amended the OSGC bylaws to limit OSGC’s purposes to “activities related solely to the purposes of commercial leasing;” and
- WHEREAS,** the 2013 Resolution limiting the purposes of OSGC also (1) expressly referenced, without amending, Article XV of the charter, which provides for the distribution of assets to the Oneida Nation after satisfying the claims of third parties and (2) declared that the dissolution might take “up to or exceed 10-12 months in order to minimize negative financial consequences and wind up the activities of the corporation in a business-like manner;” and
- WHEREAS,** it was, and remains, the understanding and interpretation of the Oneida Business Committee that OSGC’s legal claims constituted assets of the corporation that must be pursued, collected and distributed as part of the process of dissolving the corporation and winding up its affairs in a business-like manner, as required by Article XV; and
- WHEREAS,** the Oneida Business Committee on May 27, 2015 adopted amendments to OSGC’s corporate charter, through resolution # BC 05-27-15-B (the “2015 Resolution”), which amended the OSGC bylaws to “clearly limit the corporation to commercial leasing and restrict its power an authorities to maintaining the value of existing assets;” and
- WHEREAS,** the 2015 Resolution did not amend Article XV of the charter, which provides for the distribution of assets to the Oneida Nation after satisfying the claims of third parties; and
- WHEREAS,** it was, and remains, the understanding and interpretation of the Business Committee that the OSGC’s legal claims constitute assets of the corporation that must be pursued, collected and distributed as part of the process of dissolving the corporation and winding up its affairs in a business-like manner, as required by Article XV; and
- WHEREAS,** through its adoption of amendments to the OSGC corporate charter, the Oneida Business Committee did not intend to interfere with pending legal disputes involving OSGC, or otherwise to impair the rights and abilities of OSGC or any of its subsidiaries to recover any legal remedy to which they are lawfully entitled; and
- WHEREAS,** OSGC and GBRE were unsuccessful in their efforts to negotiate a settlement with the City for the damages caused to OSGC and GBRE by the wrongful revocation of the CUP; and
- WHEREAS,** on December 23, 2016, having exhausted the remedies available under Wisconsin law through the State Court Lawsuit, and as a continuation of their efforts to seek redress for the City’s wrongful revocation of the CUP, OSGC and GBRE filed a federal lawsuit against the City, alleging that the City’s actions amounted to constitutional due process violations, and that OSGC and GBRE are entitled to damages as a result (the “Federal Court Lawsuit”); and
- WHEREAS,** OSGC and GBRE filed the Federal Court Lawsuit with the knowledge and approval of the Oneida Business Committee, and as a continuation of legal efforts commenced in 2012 to recover damages from the City for its wrongful revocation of the CUP; and
- WHEREAS,** the Oneida Business Committee wishes OSGC and GBRE to continue to pursue all remedies available to them under the law in connection with the Federal Court Lawsuit; and
- WHEREAS,** under the Oneida Code of laws, § 804.3 (x); the acts, statutes, rules, regulations, policies and ordinances of the Oneida General Tribal Council and Oneida Business Committee constitute Tribal law; and

WHEREAS, the 2013 GTC Motion, as well as the 2013 Resolution and the 2015 Resolution of the Oneida Business Committee, exercising its legislative authority under the Oneida Tribal Constitution, Art. VI, constitute tribal law; and

WHEREAS, it is well-settled federal law that the authority to interpret tribal law rests with the Tribe and not with any state or federal court; and

WHEREAS, the Oneida Business Committee, and no other body other than the Oneida General Tribal Council, has the authority to construe and interpret the enactments of the Oneida General Tribal Council and the Oneida Business Committee; and

WHEREAS, the City, lacking any authority to do so, has attempted to invoke tribal law to prevent the corporation from pursuing its claims against the City; and

WHEREAS, a court cannot substitute its own interpretation of tribal law for a tribe's interpretation of its own law without infringing on the Tribe's sovereignty and right of self-government; and

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee declares and ordains, under tribal law, that neither the 2013 GTC Motion, nor the 2013 Resolution of the Oneida Business Committee, nor the 2015 Resolution of the Oneida Business Committee, nor any other act of the Oneida General Tribal Council or the Oneida Business Committee, was intended to prevent, or does prevent, the Oneida Seven Generations Corporation or any of its subsidiaries from taking steps, in the course of eventual dissolution, to minimize negative financial consequences and wind up the activities of the corporation in a business-like manner.

BE IT FINALLY RESOLVED, that the Oneida Business Committee declares and ordains, under tribal law, that neither the 2013 GTC Motion, nor the 2013 Resolution of the Oneida Business Committee, nor the 2015 Resolution of the Oneida Business Committee, nor any other act of the Oneida General Tribal Council or the Oneida Business Committee, was intended to prevent, or does prevent, Oneida Seven Generations Corporation or any of its subsidiaries, in accordance with the mandate under Art. XV of the corporate charter, from pursuing all possible claims for remedies available to them under the law, including without limitation any claims against the City of Green Bay or any other responsible party relating to the revocation of a conditional use permit by the City on or about March 1, 2011, as presently alleged in a Complaint filed in proceedings captioned *Oneida Seven Generations Corporation et al. v. City of Green Bay*, currently pending in the United States District Court for the Western District of Wisconsin with case number 1:16-cv-01700, as well as any appellate proceedings in connection with such proceedings, or further proceedings necessary to enforce any judgment or remedy obtained in such proceedings.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 8 members were present at a meeting duly called, noticed and held on the 22nd day of February, 2017; that the forgoing resolution was duly adopted at such meeting by a vote of 5 members for, 0 members against, and 2 members not voting; and that said resolution has not been rescinded or amended in any way.



Lisa Summers, Tribal Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."