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VIA ELECTRONIC FILING

April 14, 2015

Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Re: Kerr Hydroelectric Project, Project No. 5; Application for Approval of  
Partial Transfer of License and Co-Licensee Status

Dear Secretary Bose:

Enclosed please find for filing an *Application for Approval of Partial Transfer of License and Co-Licensee Status* for the Kerr Hydroelectric Project, Project No. 5 (“Kerr Project”).

In this application, the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT”), SX<sup>w</sup>NQ̄E?ELS L SUWEČM / KSUKĪĪMUMAĒ ‘A•K̄AĪMUKWA’ITS, Inc., doing business as Energy Keepers, Incorporated (“EKI”) and NorthWestern Corporation, a Delaware Corporation, doing business as NorthWestern Energy (“NorthWestern”) (collectively referred to as the “Applicants”) request that the Federal Energy Regulatory Commission (“Commission”) add EKI to the Kerr Project license<sup>1</sup> (“License”) as a co-licensee with CSKT. The Applicants request that the effective date of the License transfer and addition of EKI as a co-licensee be September 5, 2015, upon receipt by NorthWestern of the Estimated Conveyance Price and the conveyance of the Kerr Project to CSKT (“Conveyance Date”). CSKT and EKI seek approval now with a future effective date on the Conveyance Date so that EKI can establish its legitimacy in the marketplace and industry and thereby begin entering into power purchase agreements, generation interconnection agreements, and coordination agreements necessary to generate and sell electricity from the Kerr Project effective on the Conveyance Date.<sup>2</sup>

<sup>1</sup> *Mont. Power Co.*, 32 FERC ¶ 61,070 (1985) (“Licensing Order”).

<sup>2</sup> The Applicants respectfully request an exemption from the 60-day acknowledgement of acceptance requirement found at 18 C.F.R. § 9.3(b) (2014) and ask that the Commission allow EKI to acknowledge acceptance of the License transfer so that its acknowledgement coincides with the Conveyance Date.

CSKT is a federally-recognized Indian tribe and EKI is a corporation wholly-owned by CSKT. CSKT is currently a co-licensee of the Kerr Project with NorthWestern.<sup>3</sup> NorthWestern is an investor-owned utility providing electric and natural gas services to over 678,200 customers. Under the terms of the License, CSKT has the unilateral and exclusive right upon receipt by NorthWestern of the Estimated Conveyance Price to have NorthWestern convey the Project to CSKT on the Conveyance Date, at which time CSKT will control, operate, maintain, and have exclusive rights to, and interest in, the Kerr Project, and will have all of the rights and obligations of the licensee under the License and at which time NorthWestern shall have no further rights or obligations as a licensee under the License, and no longer be considered a Licensee.

As described in a previous filing with the Commission, CSKT and NorthWestern upon receipt by NorthWestern of the Estimated Conveyance Price, intend for the Kerr Project to be conveyed to CSKT on the Conveyance Date.<sup>4</sup> As stated in Licensing Order at ordering para. (C)(1), upon receipt by NorthWestern of the Estimated Conveyance Price on the Conveyance Date, CSKT will “control, operate, maintain and have exclusive right to, and interest in, the project, and will have all of the rights and obligations of the licensee under this license.”

Because NorthWestern will have no interest in the Project after the Conveyance Date and the partial transfer of the License and establishment of EKI as a co-licensee will be effective after its receipt of the Estimated Conveyance Price on the Conveyance Date, NorthWestern specially joins this application.

The partial transfer of the License and establishment of EKI as a co-licensee will have no effect on the conveyance of the Kerr Project to CSKT from NorthWestern, nor will it have any impact on the future operation of the Kerr Project.

CSKT and EKI respectfully request that the Commission act on this Application as expeditiously as possible, but no later than 30 days from the filing of this Application so that EKI may enter into power purchase agreements, generation interconnection agreements, and coordination agreements necessary for generation and sale of the Kerr Project’s electricity in advance of the Conveyance Date. Thank you for your consideration and assistance in this matter.

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<sup>3</sup> Until a recent license transfer proceeding and asset transfer, CSKT was co-licensee of the Kerr Project with PPL Montana, LLC (“PPL Montana”). On July 24, 2014, the Commission issued an order approving the transfer application of the License from PPL Montana to NorthWestern. The License transfer was dependent on PPL Montana successfully transferring its hydroelectric assets (including the Kerr Project) to NorthWestern. The transaction between PPL Montana and NorthWestern was finalized on November 18, 2014, thus, CSKT and NorthWestern are the co-licensees of the Kerr Project, until the Project is conveyed to CSKT.

<sup>4</sup> Supplemental Information of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project No. 5-000 (filed Mar. 5, 2014).



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Respectfully submitted,



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Montana Power Company (“MPC”) and CSKT (the “Licensing Order”).<sup>3</sup> The Licensing Order specified that after a term of years the Kerr Project could be transferred to full CSKT ownership; effectively splitting the license term between the two licensees. In 1999, MPC transferred its co-licensee interest to PPL Montana, LLC (“PPL Montana”).

PPL Montana and NorthWestern applied to the Commission to transfer PPL Montana’s co-licensee interest to NorthWestern.<sup>4</sup> On July 24, 2014, the Commission conditionally approved the transfer.<sup>5</sup> On September 25, 2014, the Montana Public Service Commission issued its final order approving the sale of PPL Montana’s hydroelectric assets (including the Kerr Project) to NorthWestern.<sup>6</sup> The transaction between PPL Montana and NorthWestern closed on November 18, 2014. NorthWestern is now a co-licensee of the Kerr Project with CSKT.

Under the terms of the License, CSKT has the option, unilaterally and exclusively, upon NorthWestern’s receipt of the Estimated Conveyance Price, to have NorthWestern convey the Kerr Project to CSKT on the Conveyance Date. Under the terms of the License, upon NorthWestern’s receipt of the Estimated Conveyance Price on the Conveyance Date all of NorthWestern’s interests in the Kerr Project shall without any further action on the part of NorthWestern, the Commission, or any other entity, vest in CSKT (the “Conveyance”).<sup>7</sup> As stated in Licensing Order at ordering para. (C)(1), upon the Conveyance, CSKT will “control, operate, maintain and have exclusive right to, and

<sup>3</sup> *Mont. Power Co.*, 32 FERC ¶ 61,070 (1985) [hereinafter “Licensing Order”].

<sup>4</sup> Joint Application for Approval of Transfer of Licenses and for Determination by a Date Certain, Project Nos. 5-094 et al. (filed Jan. 10, 2014).

<sup>5</sup> *PPL Mont., LLC*, 148 FERC ¶ 62,072 (2014).

<sup>6</sup> In the Matter of the Application of NorthWestern Energy for Hydro Assets Purchase, Docket No. D2013.12.85, Final Order No. 7323k (Mont. Pub. Serv. Comm’n, issued Sept. 25, 2014).

<sup>7</sup> See Licensing Order, 32 FERC ¶ 61,070 at p. 61,181 (Ordering Paragraph (C)(1)). It is the applicants’ reading of this language, that no section 203 approval is required.

interest in, the project, and will have all of the rights and obligations of the licensee under this license.”<sup>8</sup> After the Conveyance NorthWestern will have no interest in or rights or obligations, as a licensee, with regard to the Project. Because the partial transfer of the License and establishment of EKI as a co-licensee will be effective after the Conveyance as required under the License, at such time as NorthWestern no longer holds any interest in the License, NorthWestern specially joins in this application.

On March 5, 2014, CSKT provided notice that it intended to exercise its option and acquire the Kerr Project on the Conveyance Date.<sup>9</sup> Upon the Conveyance, CSKT will be the sole owner and operator of the Kerr Project until the License expires on September 4, 2035.<sup>10</sup> Further, upon the Conveyance, NorthWestern shall no longer be a licensee under the License.

CSKT is a treaty sovereign Indian tribe<sup>11</sup> that is recognized by the United States as an Indian tribal government established pursuant to section 16 of the Indian Reorganization Act (“IRA”).<sup>12</sup>

EKI is a corporation, wholly-owned by CSKT with one share of common stock that cannot be encumbered or otherwise disposed of by CSKT. EKI was chartered by the United States Department of the Interior (“Interior”) pursuant to section 17 of the IRA.<sup>13</sup> CSKT’s Tribal Council functions collectively as the Shareholder’s Representative for all

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<sup>8</sup> *Id.*

<sup>9</sup> Supplemental Information of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project No. 5-000 (filed Mar. 5, 2014).

<sup>10</sup> *See* Licensing Order, 32 FERC ¶ 61,070 at p. 61,181 (Ordering Paragraph (C)(1)).

<sup>11</sup> Treaty of Hellgate, 12 Stat. 975 (July 16, 1855).

<sup>12</sup> 25 U.S.C. § 476 (2012). *See* Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 79 Fed. Reg. 4748, 4749 (Jan. 29, 2014). CSKT is governed by a 10-member Tribal Council. CSKT has an established and federally-recognized Constitution and bylaws, ratified October 4, 1935.

<sup>13</sup> 25 U.S.C. § 477.

purposes regarding EKI. EKI's business affairs are managed under the direction of a Board of Directors, consisting of Directors appointed by the Shareholder's Representative, in the manner provided in and subject to, the provisions of EKI's corporate bylaws. EKI's purpose, *inter alia*, is to construct, manage, operate, and maintain the Kerr Project consistent with the terms of the License. EKI has established a corporate office in Polson, Montana and a corporate website at [www.energykeepersinc.com](http://www.energykeepersinc.com).

NorthWestern is an investor-owned utility and one of the largest providers of electricity and natural gas in the Pacific Northwest. NorthWestern serves approximately 678,200 customers—406,600 electric and 271,600 natural gas—in Montana, South Dakota and Nebraska. NorthWestern's corporate headquarters is located in Sioux Falls, South Dakota, and it has operational headquarters in Butte, Montana, and Huron, South Dakota.

The Applicants have been in regular contact with one another to ensure that the conveyance to CSKT on the Conveyance Date is seamless. Such contacts include, but are not limited to: training of EKI employees pursuant to Article 51 of the License; discussions regarding transmission of output from the Kerr Project; investigations and inspections of the structures, equipment and other items that comprise the Kerr Project; discussions regarding the transfer of electronic and physical records; and numerous other details regarding the operation and anticipated transfer of the Kerr Project.

NorthWestern and EKI are in the process of developing contracts for the sale of electricity from the Kerr Project post-conveyance and engage in weekly meetings.

NorthWestern consents to the addition of EKI to the license to be effective upon Conveyance. Assuming that the Commission approves this Application, CSKT and

NorthWestern will remain co-licensees of the Kerr Project until the Conveyance, at which point NorthWestern will have no further interests, rights or obligations as licensee under the License and EKI will become a co-licensee with CSKT.

The Applicants respectfully request that the Commission approve the Application to transfer the License and establish EKI as a co-licensee of the Kerr Project License so that CSKT and EKI can construct, manage, operate, and maintain the Kerr Project as co-licensees commencing upon Conveyance. In order to enter into power purchase agreements, generation interconnection agreements, and coordination agreements necessary for generation and sale of electricity from the Kerr Project, CSKT and EKI need assurance that EKI will be a Kerr Project co-licensee to satisfy EKI's legitimacy in the electric power marketplace and electric generation industry. Thus, the Applicants respectfully request the Commission act on this Application within 30 days of its receipt and establish EKI as a co-licensee effective upon the Conveyance to allow it to prepare to operate the Kerr Project and market its power output in advance of September 5, 2015.

## **II. INFORMATION REQUIRED BY SECTIONS 9.1-9.3 AND 131.20 OF THE COMMISSION'S REGULATIONS**

The provisions of sections 9.1 through 9.3 of the Commission's regulations require that this Application contain certain information, statements, and verifications in a form that conforms to the requirements of section 131.20 of the Commission's regulations. The Commission's regulations also require that this Application set forth, in appropriate detail, the qualifications of a transferee to hold the License and to operate the licensed Kerr Project.<sup>14</sup> Each of these requirements is addressed, in turn, below.

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<sup>14</sup> 18 C.F.R. §§ 9.1-9.2.



### Information Required by Section 131.20

1. The Applicants hereby apply, pursuant to sections 9.1 through 9.3 and section 131.20 of the Commission's regulations, for the Commission's written approval of the transfer of the License and the establishment of EKI as a co-licensee for the Kerr Project and request that the instrument of such approval by the Commission be made effective upon the Conveyance. CSKT is a co-licensee of the Kerr Project with NorthWestern. EKI is a corporation, wholly-owned by CSKT,<sup>15</sup> and chartered by Interior pursuant to section 17 of the IRA.<sup>16</sup> The Kerr Project is partially located within the CSKT's treaty-reserved Flathead Reservation on Flathead Lake and the Flathead River in western Montana, and consists of a reservoir, dam, penstocks, powerhouse, and related assets.

2. EKI is authorized to do business under the IRA. EKI's Corporate Charter was approved by Interior's Bureau of Indian Affairs on August 30, 2012 and was ratified by the CSKT Tribal Council on August 16, 2012. The CSKT Tribal Council, acting in its capacity as the Shareholder's Representative for EKI, ratified bylaws for EKI on November 13, 2012 that provide for the establishment of a Board of Directors to manage EKI's business affairs. EKI has been conducting business since November 13, 2012 under the direction of a Board of Directors consisting of five persons with extensive experience collectively in energy industry business startup, business finance, and business management.<sup>17</sup>

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<sup>15</sup> EKI's Corporate Charter and Corporate Bylaws are attached to this Application as Attachments A and B respectively.

<sup>16</sup> 25 U.S.C. § 477.

<sup>17</sup> A brief introduction to EKI's Board of Directors is provided in Attachment C.

EKI is legally qualified to hold the License. As provided in Article V.C of its Federal Charter of Incorporation, the purpose of the corporation is to “manage, operate, and maintain the Kerr Hydroelectric Project and related assets, both tangible and intangible, consistent with the terms of the Commission license for the Kerr Hydroelectric Project.”<sup>18</sup>

3. EKI states for purposes of section 9(a)(2) of the FPA that to the best of its knowledge and belief it is in compliance with all applicable state laws.<sup>19</sup>

4. CSKT and EKI will submit certified copies of all instruments of conveyance upon NorthWestern’s conveyance of the Kerr Project to CSKT on the Conveyance Date.<sup>20</sup>

5. Upon conveyance of the Kerr Project to CSKT, and the establishment of EKI as a co-licensee, CSKT and EKI, as the licensees, will permanently retain all license instruments and all maps, plans, specifications, contracts, reports of engineers, accounts, books, records, and all other papers and documents related to the original Kerr Project and to all additions thereto and betterments thereof.<sup>21</sup>

6. CSKT certifies that it has fully complied with the terms and conditions of the License and will continue to fully comply with the terms and conditions of the License once EKI becomes established as a co-licensee.<sup>22</sup>

7. Contingent upon the final written approval by the Commission of the addition of EKI to the License, EKI accepts all the terms and conditions of the License

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<sup>18</sup> See Attachment B at 11.

<sup>19</sup> 18 C.F.R. § 131.20(5).

<sup>20</sup> *Id.* § 131.20(6).

<sup>21</sup> *Id.* § 131.20(7).

<sup>22</sup> *Id.* § 131.20(8).

and the applicable sections of the FPA,<sup>23</sup> and agrees to be bound thereby to the same extent as though it were the original licensee thereunder.<sup>24</sup>

8. The name, title, post-office address, and other contact information of the person or persons to whom correspondence in regard to this Application are addressed *infra* Section IV.

9. The partial transfer of the License and establishment of EKI as a co-licensee will have no effect on the operation of the Kerr Project. A significant number of the employees that operate the Kerr Project today will continue to operate the Kerr Project after the establishment of EKI as a co-licensee. EKI will have the same access as CSKT, to the financial and other resources necessary, to continue operating the Kerr Project in accordance with the current License.

### **III. PARTIAL TRANSFER OF THE KERR PROJECT LICENSE AND AWARDING CSKT AND EKI CO-LICENSEE STATUS IS IN THE PUBLIC INTEREST**

As demonstrated above, EKI is legally, technically, and financially qualified to be a co-licensee of the Kerr Project. EKI is legally qualified to be a licensee under section 9(a)(2) of the FPA.<sup>25</sup> EKI is developing an organizational structure that will include 21 employees and numerous consultants. EKI, through certain of its executives, has extensive prior experience with hydroelectric projects and the Commission's licensing requirements under Part I of the FPA. Twelve of EKI's employees have or will receive

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<sup>23</sup> See *Confederated Salish & Kootenai Tribes, of the Flathead Reservation*, 149 FERC ¶ 61,216 (2014). The Commission recently granted CSKT and EKI's petition for a declaratory order finding that Applicants are exempt public utilities under section 201(f) of FPA and under the Public Utility Holding Company Act of 2005. Thus, there are some requirements of Part II of the FPA that the Applicants are not required to comply with; however, the Applicants are bound by certain provisions of FPA Part II as enumerated in the Commission's order, *id.* at P 30, and the Applicants will comply with these provisions as well as any other applicable sections of the FPA.

<sup>24</sup> 18 C.F.R. § 131.20(9).

<sup>25</sup> 16 U.S.C. § 802(a)(2).

training from PPL Montana and NorthWestern pursuant to the terms of License Article 51 “sufficient to enable the trainees to operate and maintain the project in substantially the same manner, and within the substantially same standards, as [NorthWestern’s] employees.”<sup>26</sup> Furthermore, EKI’s technical capability and qualifications to operate the Kerr Project is further assured because a key NorthWestern employee, with over 25 years of experience successfully performing engineering and operations of the Kerr Project, has become an employee of EKI and will continue to perform similar job functions for EKI after the Conveyance Date. EKI has secured contracts for professional consulting services from several firms with extensive experience in constructing, operating, and maintaining hydroelectric facilities worldwide. EKI has initiated consultation with governmental agencies with regulatory jurisdiction over the resources affected by the Kerr Project’s operations and has initiated consultation with other hydroelectric project operators in the Clark Fork River Basin.

EKI agrees to (1) accept all the terms and conditions of the License; (2) be bound by the License as if it were the original licensee; and (3) operate and maintain the Kerr Project in accordance with the License and the regulations and directives of the Commission under the FPA. It is therefore, in the public interest for the Commission to approve the establishment of EKI as a co-licensee of the Kerr Project’s License.

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<sup>26</sup> Licensing Order, 32 FERC ¶ 61,070 at p. 61,188 (License Article 51).

#### IV. COMMUNICATIONS

Communications with respect to this Application should be directed to:

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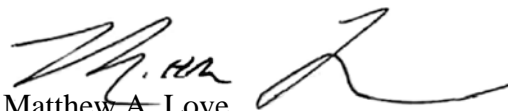
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#### V. CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Commission approve the partial transfer of License to EKI, and award EKI co-licensee status of the Kerr Project, along with CSKT as requested herein no later than September 5, 2015, **confirming that no section 203 approval is required** and that upon the Conveyance, NorthWestern shall no longer be a licensee on the Kerr Project, having no further rights or obligations as licensee under said License. Applicants finally respectfully request an

exemption from the 60-day acknowledgement of acceptance requirement found at 18 C.F.R. § 9.3(b) and ask that the Commission allow EKI to acknowledge acceptance of the License transfer so that its acknowledgement coincides with the Conveyance.

Respectfully submitted,



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*Counsel for the Confederated Salish and  
Kootenai Tribes of the Flathead Reservation*

Dated: April 14, 2015

This Application is specially joined by NorthWestern Corporation, a Delaware Corporation, d/b/a NorthWestern Energy. NorthWestern does not dispute, but can offer no verification of the representations made by CSKT and/or EKI, concerning: (1) the legal or financial status of either CSKT or EKI; or (2) the organizational structure, staffing or proposed operations by either CSKT or EKI.

Respectfully submitted,

s/ John K. Tabaracci  
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A Delaware Corporation  
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# **ATTACHMENT A**

Resolution No. 12-226

**RESOLUTION  
OF THE GOVERNING BODY OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION**

**RESOLUTION TO RATIFY FEDERAL CHARTER OF INCORPORATION FOR  
SX<sup>w</sup>NQe7ELS I SUWĒČM /KSUKĪĪMUMAĪ 'A.KAĪMUKWA'ITS, INCORPORATED  
(d/b/a ENERGY KEEPERS, INCORPORATED)**

**Be It Resolved By** the Tribal Council of the Confederated Salish and Kootenai Tribes:

**Whereas**, the Tribal Council, as primary governing body of the Confederated Salish and Kootenai Tribes ("Tribes"), is entrusted with the responsibility to operate the Tribes' governmental business, to protect and preserve Tribal property, wildlife and natural resources, and to protect the health, security and general welfare of the Tribes;

**Whereas**, Congress by enacting Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477 (June 18, 1934, c. 576, § 17, 48 Stat. 988; May 24, 1990, Pub.L. 101-301, § 3(c), 104 Stat. 207), as amended, authorized the Secretary of the U.S. Department of the Interior ("Secretary of the Interior") to issue a federal charter of incorporation to an Indian tribe;

**Whereas**, the Tribes are a federally-recognized Indian tribe;

**Whereas**, the Tribal Council, by Resolution No. 12-204 enacted August 16, 2012, petitioned the U.S. Department of the Interior, Bureau of Indian Affairs, Northwest Regional Director ("BIA NW Regional Director") pursuant to authority delegated to him by the Secretary of the Interior under 25 U.S.C. § 477, as amended, to issue a federal charter of incorporation to the Tribes to establish Sx<sup>w</sup>nq̄e7els I SuwĒčm/KsukĪĪmumaĪ 'A.kāĪmukwa'its, Incorporated (d/b/a Energy Keepers, Incorporated) as a federal corporation; and

**Whereas**, all of the legal requirements for issuance of a federal charter of incorporation have been fulfilled.

**Whereas**, the BIA NW Regional Director approved a federal charter of incorporation for Sx<sup>w</sup>nq̄e7els I SuwĒčm/KsukĪĪmumaĪ 'A.kāĪmukwa'its, Incorporated (d/b/a Energy Keepers, Incorporated) on August 29, 2012, and issued the approved charter to the Tribes to become operative upon ratification by the governing body of the Tribes;

**Whereas**, the federal charter of incorporation issued by the BIA NW Regional Director for Sx<sup>w</sup>nq̄e7els I SuwĒčm/KsukĪĪmumaĪ 'A.kāĪmukwa'its, Incorporated (d/b/a Energy Keepers, Incorporated) is in the same form as was presented by the Tribal Council to the BIA NW Regional Director in the Tribes' petition and is acceptable to the Tribal Council in its approved form;



**Whereas**, there is no requirement pursuant to the Constitution or laws of the Tribes that prescribes any particular action, including a referendum of the membership of the Tribes, for ratifying the federally-approved charter of incorporation for Sx<sup>w</sup>ndę?els | Suwęc̄m/ Ksuk̄īmumā ʼA-kāmukwaʼits, Incorporated (d/b/a Energy Keepers, Incorporated); and

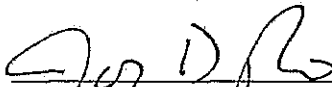
**Whereas**, the Tribal Constitution, at Part 2 – Bylaws, Article II, Section 2, vests the Tribal Council with the power to take action pursuant to resolution.

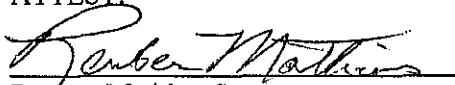
**Now therefore be it resolved**, that the Tribal Council hereby ratifies the federal charter of incorporation for Sx<sup>w</sup>ndę?els | Suwęc̄m/ Ksuk̄īmumā ʼA-kāmukwaʼits, Incorporated (d/b/a Energy Keepers, Incorporated) as approved by the BIA NW Regional Director on August 29, 2012 pursuant to authority delegated to him by the Secretary of the U.S. Department of the Interior under 25 U.S.C. § 477, as amended; and

**Now, therefore be it further resolved**, that the Tribal Council hereby authorizes and directs the Tribal Department of Energy, the Tribal Legal Department, and the Chairman of the Tribal Council to develop supporting documents and take additional actions necessary to incorporate and make operational Sx<sup>w</sup>ndę?els | Suwęc̄m/ Ksuk̄īmumā ʼA-kāmukwaʼits, Incorporated (d/b/a Energy Keepers, Incorporated) consistent with its federal charter of incorporation.

**CERTIFICATION**

The foregoing resolution was adopted by the Tribal Council on the 4<sup>th</sup> day of September, 2012, with a vote of 9 for, 0 opposed, and 1 not voting, pursuant to the authority vested in the Tribal Council by Article VI, Section 1(a), (c), (f), (o), and (u) of the Tribes' Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

  
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Joe Durglo, Chairman  
Tribal Council

ATTEST:  
  
\_\_\_\_\_  
Reuben Mathias, Secretary  
Tribal Council

Resolution No. 12-204

**RESOLUTION  
OF THE GOVERNING BODY OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD RESERVATION, MONTANA**

**BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE CONFEDERATED  
SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION**

**WHEREAS**, the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“Tribes”) is a federally recognized Indian tribe, governed under a constitutional form of government organized pursuant to Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, as amended, and possessing all the inherent sovereign powers of self-government; and

**WHEREAS**, the Tribal Council is the duly authorized governing body of the Confederated Salish and Kootenai Tribes; and

**WHEREAS**, the Tribes desire to create a business corporation known as SX<sup>w</sup>NQ̄E’ELS L SUWEČM/KSUKĚĪEMUMAĚ ṖA-ĶAĚMUKWAṖITS, INCORPORATED [to at times do business as ENERGY KEEPERS, INCORPORATED](hereinafter referred to as “Corporation”), which is to be wholly owned by the Tribes and organized as a federal corporation under Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477, as amended; and

**WHEREAS**, the Internal Revenue Service has ruled that a business corporation chartered under Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477, as amended, retains the non-taxable status of the Indian tribe that owns the business corporation; and

**WHEREAS**, the Tribal Council has determined that the best interests of the Tribes will be served by organizing Corporation as a federal corporation under Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477, as amended; and

**WHEREAS**, the Tribal Council has reviewed and approved the attached draft of a federal charter of incorporation for Corporation, which is attached hereto and incorporated herein as Exhibit “A”; and

**WHEREAS**, there is no requirement under the Constitution or other law of the Tribes that requires a referendum by the members of the Tribes or any other procedure beyond this Resolution in order to petition or obtain a federal charter of incorporation under 25 U.S.C. § 477, as amended.

**NOW THEREFORE, BE IT RESOLVED**, that the Tribal Council hereby petitions the Secretary of the Interior to issue a federal charter of incorporation to the Tribes pursuant to 25 U.S.C. § 477, as amended, in the form attached as Exhibit A to this Resolution, or in such modified form as the Secretary of the Interior may approve with the concurrence of the Tribal Council.

**BE IT FURTHER RESOLVED**, that the Tribal Council requests that the federal charter of incorporation be issued to the Tribes at the earliest feasible date.

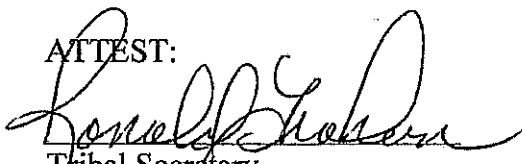
**BE IT FURTHER RESOLVED**, that the Tribes hereby authorize the Tribes' legal counsel to work with the Chairman and his staff to secure the timely issuance of the federal charter of incorporation to the Tribes.

**BE IT FURTHER RESOLVED**, that the federal charter of incorporation requested in this resolution shall not be effective until ratified by vote of the Tribal Council as provided in 25 U.S.C. § 477, as amended.

**CERTIFICATION**

The foregoing Resolution was adopted by the Tribal Council on the 16 day of August, 2012, with a vote of 8 for, and 0 opposed, and 0 not voting, pursuant to authority vested in it by Article VI, Section 1(a), (c), (f), (o) and (u) of the Tribes' Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

  
\_\_\_\_\_  
Chairman, Tribal Council

ATTEST:  
  
Tribal Secretary

# **EXHIBIT "A"**

**FEDERAL CHARTER OF INCORPORATION  
ISSUED BY THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
TO THE  
CONFEDERATED SALISH AND KOOTENAI TRIBES  
FOR  
SX<sup>w</sup>NQÉ<sup>?</sup>ELS L SUWEČM /KSUKĪĪMUMAĒ ʼA.KAĪMUKWAʼITS,  
INCORPORATED [d/b/a ENERGY KEEPERS, INCORPORATED]  
A FEDERALLY CHARTERED CORPORATION**

**RECITALS**

**Whereas**, Congress by enacting Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477 (June 18, 1934, c. 576, § 17, 48 Stat. 988; May 24, 1990, Pub.L. 101-301, § 3(c), 104 Stat. 207), as amended, authorized the Secretary of the U.S. Department of the Interior (“Secretary of the Interior”) to issue a federal charter of incorporation to an Indian tribe;

**Whereas**, the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT”) are a federally-recognized Indian tribe;

**Whereas**, the Tribal Council of CSKT petitioned the Secretary of the Interior pursuant to 25 U.S.C. § 477, as amended, to issue a federal charter of incorporation to CSKT to establish Sx<sup>w</sup>nqé<sup>?</sup>els l Suwečm /KsukĪĪmumaĒ ʼA.kāĪmukwaʼits, Incorporated [d/b/a Energy Keepers, Incorporated] as a federal corporation; and

**Whereas**, all of the legal requirements for issuance of this federal charter of incorporation have been fulfilled.

**Now Therefore**, I, Stanley Speaks, Director of the Northwest Regional Office – Bureau of Indian Affairs, pursuant to the power conferred upon the Secretary of the Interior by 25 U.S.C. § 477, as amended, and delegated to me, do hereby issue this Federal Charter of Incorporation (“Charter”) to CSKT for Sx<sup>w</sup>nqé<sup>?</sup>els l Suwečm /KsukĪĪmumaĒ ʼA.kāĪmukwaʼits, Incorporated [d/b/a Energy Keepers, Incorporated] to be operative when ratified by the Tribal Council of CSKT.

## ARTICLES

### **Article I: Name**

The name of the corporation is Sx<sup>w</sup>nqe<sup>?</sup>els I Suwečm /Ksuk<sup>ti</sup>muma<sup>?</sup> 'A-ka<sup>m</sup>mukwa<sup>'</sup>its, Incorporated, which will from time to time do business as Energy Keepers, Incorporated (hereinafter referred to as "Corporation").

### **Article II: Authority**

The Corporation is organized under the laws of the United States, 25 U.S.C. § 477 (June 18, 1934, c. 576, § 17, 48 Stat. 988; May 24, 1990, Pub.L. 101-301, § 3(c), 104 Stat. 207), as a federally chartered corporation and will have the powers, privileges and immunities granted thereby.

### **Article III: Status and Management of the Corporation**

- A. The Corporation is a legal entity wholly owned by CSKT, a federally recognized Indian tribe, but is distinct and separate from CSKT. CSKT, when functioning in its ownership capacity, is hereinafter referred to as the "Shareholder".
- B. The Tribal Council of CSKT will function collectively as the Shareholder's representative (hereinafter referred to as "Shareholder's Representative") for all purposes regarding the Corporation. Tribal Council members will have no authority to act individually on behalf of the Shareholder other than through participation in a collective action of the Tribal Council of CSKT.
- C. At all meetings of the Shareholder, the Shareholder's Representative will function in the role of sole Shareholder for the Corporation and not in a governmental capacity as Tribal Council of CSKT. Matters within the scope of interest and authority of the Shareholder will only be discussed and decided upon by the Shareholder's Representative when sitting as the Shareholder at a Shareholder's meeting.
- D. The business affairs of the Corporation will be managed under the direction of a Board of Directors ("Board") consisting of Directors appointed by the Shareholder's Representative in the manner provided in and subject to the provisions of the Corporation's bylaws. The Tribal Council of CSKT will have no authority to direct the business affairs of the Corporation, except through its status as Shareholder's Representative.

### **Article IV: Duration**

The period of the Corporation's duration is perpetual, or until this Charter is revoked by Act of Congress, pursuant to 25 U.S.C. § 477, as amended.

#### **Article V: Purposes and Objectives**

The purposes and objectives of the Corporation are to:

- A. promote and facilitate the development and utilization of energy resources for the benefit of the members of the CSKT pursuant to agreements with the Shareholder;
- B. construct operate, and maintain, or cause to be constructed, operated, and maintained so as to generate a profit and accrued income, the Kerr Hydroelectric Project and related assets, both tangible and intangible;
- C. manage, operate, and maintain the Kerr Hydroelectric Project and related assets, both tangible and intangible, consistent with the terms of the Federal Energy Regulatory Commission license for the Kerr Hydroelectric Project;
- D. assist CSKT in financing acquisition of the Kerr Hydroelectric Project and related assets, both tangible and intangible;
- E. engage in any and all other activities as authorized by the Shareholder; and
- F. engage in any and all activities necessary or incidental to the foregoing.

#### **Article VI: General Powers**

The Corporation, subject to any restriction contained in the Constitution and laws of the United States, in the Constitution and By-Laws of CSKT, or in this Charter, will perform every action that it deems necessary, expedient, and proper to fulfill the purposes and objectives of the Corporation, as specifically provided in Article V of this Charter, and all other provisions of this Charter. Without limiting any authority otherwise granted herein, the Corporation may:

- A. Make and perform contracts, indemnifications, and guarantees. Pledge a security, other than a landed security upon any trust or restricted lands included within CSKT's Indian Country, for the repayment of bonds, loans, credit enhancements or other obligations, encumber or expend the revenues and income due or to become due to the Corporation;
- B. Incur indebtedness through the issuance of bonds, notes, or other obligations including obtaining credit enhancements therefore in such amounts as may be

required to establish and operate the Corporation, make capital improvements and carry out the powers granted to the Corporation by this Charter;

- C. Purchase, receive, lease or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any interest in property, wherever located;
- D. Manage, operate, and maintain the Kerr Hydroelectric Project, including: the lands located within the Project boundary that are used and useful in the Project operations, to the extent of the Federal Energy Regulatory Commission licensee's interest in those lands; the Project works; and all of the structures, fixtures, equipment, and facilities used or useful in operating and maintaining the Project;
- E. Sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise convey all or any interest in the Corporation's property or assets to the extent permitted by Articles IX(B) and (C) of this Charter; provided however, that in accordance with the provisions of 25 U.S.C. § 477, as amended, the Corporation has no authority to sell, mortgage, or lease for a period of time exceeding twenty-five years, any trust or restricted lands included within CSKT's Indian Country;
- F. Lend money as required for normal generation and sale of energy from the Kerr Hydroelectric Project, invest and/or reinvest Corporate funds and receive and hold real and personal property as security for repayment;
- G. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or any other entity as may be approved by the Shareholder;
- H. Conduct its business, locate offices, and exercise powers granted by this Charter;
- I. Make and amend bylaws, subject to ratification by the Shareholder, consistent with this Charter and the laws of the United States and CSKT, for managing the business and regulating the affairs of the Corporation;
- J. Nominate directors, appoint officers, hire employees, and engage agents of the Corporation;
- K. Define employees' and agents' duties and fix their compensation;
- L. Establish and fund pension, benefit, or incentive plans for its employees and agents;



- M. Make donations for the public welfare or for charitable, scientific, or educational purposes consistent with CSKT government policy; and
- N. Transact lawful business that will aid CSKT government policy.

**Article VII: Power to Sue and Be Sued**

Except as provided hereafter in this Article, the Corporation:

- A. Waives any defense of sovereign immunity from suit that the Corporation may otherwise enjoy under applicable federal, state or CSKT law, arising from any agreement, matter or transaction as may be entered into to further the purposes of the Corporation;
- B. Consents to suit in federal court, and consents to alternative dispute resolution mechanisms such as arbitration or mediation; and
- C. Waives any defense the Corporation may otherwise assert that federal, state or CSKT law requires exhaustion of tribal court remedies prior to suit against the Corporation in a state or federal court otherwise having jurisdiction over the subject matter and the parties.

Nothing in this Charter, and no waiver of the Corporation's sovereign immunity pursuant to this Article shall be construed as a waiver of the sovereign immunity of CSKT or any instrumentality of CSKT other than the Corporation, and no such waiver by the Corporation shall create any liability on the part of CSKT or any other instrumentality of CSKT for the debts and obligations of the Corporation, or shall be construed as a consent to the encumbrance or attachment of any property of CSKT or any other instrumentality of CSKT based on any action, adjudication or other determination of liability of any nature incurred by the Corporation.

**Article VIII: New Projects**

The Corporation may explore, investigate, and analyze new energy generation projects and may undertake planning and development of such projects consistent with Article V above.

**Article IX: Express Limitation on Corporate Powers**

The Corporation is without power to:

- A. Bind any part of CSKT, other than the Corporation itself;

- B. Voluntarily sell, lease, transfer, encumber, abandon, or otherwise dispose of any CSKT assets, other than those belonging to the Corporation itself, without the express written approval of the Shareholder;
- C. Voluntarily sell, lease, transfer, encumber, abandon, or otherwise dispose of interests in the Kerr Hydroelectric Project and its related lands, project works, franchises, easements, water rights, and rights of occupancy without express written approval of the Federal Energy Regulatory Commission, except that the Corporation may voluntarily sell, lease, transfer, encumber, abandon, or otherwise dispose of interests in Kerr Hydroelectric Project lands or property without specific written approval of the Federal Energy Regulatory Commission pursuant to the then current regulations of the Federal Energy Regulatory Commission;
- D. Operate in a manner inconsistent with this Charter, the bylaws of the Corporation, applicable federal and CSKT law, or the due and valid directives, standards and policies promulgated by the Shareholder's Representative;
- E. Exercise governmental functions;
- F. Waive the sovereign immunity of CSKT beyond the waiver provided at Article VII above; or
- G. Assume the legal status of licensee before the Federal Energy Regulatory Commission for any license, including the license for the Kerr Hydroelectric Project, without the approval of the Shareholder.

**Article X: Ownership of the Corporation**

- A. The Corporation is wholly owned by CSKT. The Corporation is authorized to and will issue one share of common stock, without par value, to CSKT, constituting the sole authorized stock of the Corporation.
- B. The authorized and issued share of the Corporation will not be encumbered or disposed of by CSKT. The share certificate issued by the Corporation will contain the following endorsement:

The share represented by this certificate is not transferable, as provided in the Federal Charter of Incorporation of Sx<sup>w</sup>nq̄e'els l Suwečm /Ksuk̄iḥnumaḥ 'A-kaḥmukwa'its, Incorporated [d/b/a Energy Keepers, Incorporated], copies of which are on file with the Secretary of the Tribal

Council of the Confederated Salish and Kootenai Tribes and with  
Sx<sup>w</sup>nqe<sup>9</sup>els l Suwečm /Ksuk<sup>h</sup>imuma<sup>h</sup> 'A.ka<sup>m</sup>mukwa<sup>i</sup>ts, Incorporated [d/b/a  
Energy Keepers, Incorporated].

- C. CSKT, as the sole Shareholder, will hold the authorized share of the Corporation on behalf of the entire membership of CSKT. No individual or entity other than CSKT may acquire any share of, or interest in, the Corporation.
- D. CSKT's share in the Corporation will not be pledged or hypothecated, voluntarily or involuntarily, without the prior written consent of the Shareholder's Representative, in accordance with this Charter and with applicable federal and CSKT law.
- E. Neither the status nor lawful actions of CSKT as Shareholder will be construed as a waiver of the sovereign immunity of the CSKT nor as consent by CSKT to be sued.
- F. Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing, or granting the State of Montana, or any other state, any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of CSKT's Indian country.

#### **Article XI: Disbursement of Net Revenue**

- A. The Board will disburse the net revenue of the Corporation not less often than once each year in amounts that are consistent with the Corporation's financial, operating, and management plans (including reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Board of Directors), provided however that no disbursement will be made when:
  - 1. The Corporation would not be able to pay its debts as those debts become due in the usual course of its business;
  - 2. The value of the Corporation's total assets would be less than the sum of its total liabilities; or
  - 3. The disbursement would violate applicable law.
- B. All disbursements declared by the Board will be paid to CSKT as the Shareholder, disbursements will not be paid directly to members of CSKT.

#### **Article XII: Registered Agent, Principal Office, Principal Place of Business**

The registered agent of the Corporation is the Chief Executive Officer of the Corporation. The mailing address of the registered office of the Corporation is P.O. Box 218, Pablo, Montana 59855. The principal place of business of the Corporation is the Flathead Indian Reservation.

**Article XIII. Corporate Seal.** The Board will provide a Corporate seal that contains the name of the Corporation and the words and figures showing that the Corporation was incorporated under federal law and the year of incorporation.

**Article XIV. Dissolution.**

A. After issuance of this Charter by the Secretary of the Interior and ratification by the Tribal Council of CSKT, the Corporation may be dissolved only as provided in this Article.

B. The Corporation may be dissolved by the act of the Corporation as follows:

1. The Board will adopt a resolution recommending that the Corporation be dissolved and directing that the question of dissolution be submitted to a vote at a meeting of the Shareholder.
2. Reasonable written notice will be given to each member of the Shareholder's Representative that states the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the Corporation.
3. At the Shareholder's meeting, a vote will be taken on a resolution to dissolve the Corporation.
4. Upon adoption of the resolution, a statement of intent to dissolve will be executed by a majority of the Directors and verified by one of the Directors who is signing the statement, and delivered to the Secretary of the Interior.
5. Upon filing with the Secretary of the Interior of the statement of intent to dissolve, the Corporation will cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence will continue until this Charter is revoked by Congress.
6. After filing the statement of intent to dissolve, the Corporation will immediately cause notice thereof to be mailed to each known creditor of the Corporation, proceed to collect its assets, convey, and dispose of its properties that are not distributed in kind to its Shareholder, pay, satisfy, and discharge its liabilities and obligations and perform all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, to its Shareholder.

- 7. By resolution of the Board or by resolution adopted by the Shareholder's Representative at any time prior to revocation of this Charter by Congress, the Corporation may revoke voluntary dissolution proceedings. Written notice of the revocation will be filed with the Secretary of the Interior. Upon filing the revocation of voluntary dissolution proceedings, the revocation will be effective and the Corporation may again carry on its business.
- 8. If voluntary dissolution proceedings have not been revoked when all debts, liabilities, and obligations of the Corporation have been paid and discharged, or adequate provisions have been made therefore, and all of the remaining property and assets of the Corporation have been distributed to the Shareholder, CSKT will take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

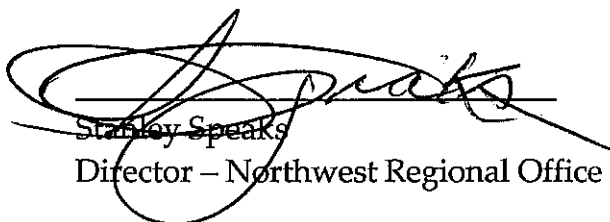
**Article XV. Amendment**

- A. The authority to petition for amendment to this Charter is vested in the Tribal Council of CSKT, but such amendment will have no legal force or effect until approved by the Secretary of the Interior and ratified by the Tribal Council of CSKT in accordance with 25 U.S.C. § 477, as amended, and in accordance with CSKT law.
- B. The Board may request that the Tribal Council of CSKT petition the Secretary of the Interior for amendment to this Charter, but the final decision on submitting any petition will be made by the Tribal Council of CSKT.

**Approval by the Secretary of the United States Department of the Interior**

I, Stanley Speaks, Director of the Northwest Regional Office – Bureau of Indian Affairs, pursuant to the power conferred upon the Secretary of the Interior by 25 U.S.C. § 477, as amended, and delegated to me, do hereby issue this Federal Charter of Incorporation ("Charter") for use by CSKT and its Sx<sup>w</sup>nq̄e'els l Suwečm /Ksuk̄iimumaḥ ḂA.kaḥmukwa'its, Incorporated [d/b/a Energy Keepers, Incorporated]. This Federal Charter of Incorporation will become effective upon ratification by the Tribal Council of CSKT, provided nothing in this approval will be construed as authorizing any action under this Charter that would be contrary to federal law.

Dated this 29 day of August, 2012;



Stanley Speaks  
Director – Northwest Regional Office


**Ratification by CSKT and Adoption by Corporation**

This Federal Charter of Incorporation is hereby ratified by the Tribal Council of CSKT in the Tribal Council's official collective capacity as incorporator of the Corporation on the 4<sup>th</sup> day of September, 2012 by a vote of 9 for and 0 opposed, and 1 not voting, pursuant to the authority vested in the Tribal Council by Article VI, Section 1(a), (c), (f), (o) and (s) of the CSKT Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended. This ratification is made effective by signature of the Chairman and Secretary of the Tribal Council, in their official capacities as incorporator's representatives, and is adopted by the Board of Directors.

**Confederated Salish and Kootenai Tribes:**

  
\_\_\_\_\_  
Joe Durglo, Tribal Council Chairman

Attest:

 FOR:  
\_\_\_\_\_  
Reuben Mathias, Tribal Council Secretary

## **ATTACHMENT B**

**BYLAWS  
OF  
SX<sup>w</sup>NQÉ?ELS L SUWÉČM / KSUKŁIŁMUMAŁ ʼA.ĶAŁMUKWAʼITS  
ENERGY KEEPERS, INCORPORATED**

**Article I: Shareholder's Meetings**

A. Shareholder's Meetings. There will be two biannual shareholder's meetings each year for the transaction of business of Sx<sup>w</sup>nqé?els l Suwéčm / Ksukłiłmumał ʼA.Ķałmukwaʼits, d.b.a. Energy Keepers, Incorporated ("Corporation") as may properly come before it held at the offices of the Confederated Salish and Kootenai Tribes ("CSKT") in Pablo, Montana, or at such place on the Flathead Indian Reservation as will be set forth in the notice of each meeting. The biannual shareholder's meetings will be held in the months of January and July of each year. Pursuant to the Corporation's Charter, the Corporation's only shareholder is CSKT (the "Shareholder"). The Shareholder will exercise all of its rights as the Shareholder through the CSKT Tribal Council in accordance with its bylaws and when acting in such capacity the CSKT Tribal Council is hereinafter referred to as the Shareholder's Representative.

B. Special Meetings. A special Shareholder's meeting may be called at any time by a majority of the duly elected members of the CSKT Tribal Council when functioning collectively in their capacity as the Shareholder's Representative, a majority of the Board of Directors, the Chair of the Board, or the Corporation's Chief Executive Officer.

C. Notice Requirements. The Secretary will give reasonable advance written notice of not less than five business days stating the date, time, and place of a Shareholder's meeting to the Shareholder. In addition, the Secretary will provide a courtesy copy of the notice at the same time to each member of the Shareholder's Representative. In the case of a special Shareholder's meeting, the notice must state the purpose for which the special meeting is called and identify by name whom, or at whose direction, the meeting is called. Written notice by the Corporation to the Shareholder is effective when mailed first-class mail, postage prepaid, and correctly addressed in the name of the Shareholder at P.O. Box 278, Pablo, Montana 59855. The courtesy copy of notices to the members of the Shareholder's Representative may be mailed to the same address. The term "Secretary" as used herein refers to that certain Board officer whose office is established pursuant to Article III Section G of these Bylaws.

D. Waiver of Notice. Any requirement for notice in these Bylaws, in federal law, or in CSKT law may be waived, in writing, by any person or persons entitled to such notice. The waiver of notice may be executed before, during, or after the meeting or event. A quorum of the members of the Shareholder's Representative may waive any notice requirement for a special Shareholder's meeting, before or after the date of such special meeting, by delivering a written waiver to the Secretary signed by each member of said quorum. Attendance by an individual member of the Shareholder's Representative at any



Shareholder's meeting constitutes waiver of his or her right to notice or claim to defect in the notice unless the member specifically objects at the meeting in a timely fashion.

E. Quorum. The presence of a majority of the members of the Shareholder's Representative is necessary to constitute a quorum for the transaction of business at all Shareholder's meetings.

F. Voting. When an action of the Shareholder is required under the Corporation's Federal Charter of Incorporation or these Bylaws, or is deemed necessary by the Shareholder, then the action of a majority of the members of the Shareholder's Representative who are present at a meeting at which a quorum is present will be the action of the Shareholder, unless the action of a greater number is required elsewhere in these Bylaws. Each member of the Shareholder's Representative, including the member presiding at a meeting of the Shareholder, will be entitled to one vote. The aforementioned voting procedures will also apply to Shareholder ratification of amendments to these Bylaws.

G. Remote Participation. The members of the Shareholder's Representative may participate in a Shareholder's meeting by means of any communications equipment that provides for all persons participating in the meeting to hear one another during the meeting. Any member of the Shareholder's Representative so participating will be deemed to be present for purposes of establishing a quorum and for all other meeting purposes.

H. Action Without a Meeting. Any action that the Shareholder is required or permitted to take at a Shareholder's meeting may be taken without a meeting if the action taken is in a writing signed by all of the members of the Shareholder's Representative who would be entitled to vote on the action at a meeting.

I. Ratification of Incorporator's Contracts and Obligations. Any contract, transaction, or act of the Incorporators of the Corporation will, to the extent permitted by law, be valid and binding upon the Corporation.

## **Article II: Directors**

A. Establishment and General Powers. The Corporation will have a Board of Directors ("Board"). The business and affairs of the Corporation will be managed and controlled by the Board.

B. Composition. The Board will consist of five Directors, but may have fewer Directors if there are temporary unfilled vacancies. The number of Directors may be increased or decreased from time to time by amendment to these Bylaws. No decrease in the number of Directors will have the effect of shortening term of office of any incumbent Director. The Board will include:

1. three Directors who are enrolled members of CSKT and who have expertise in the field of energy or related matters; and

2. Directors who are interested in the economic and social development of CSKT and who have expertise in the field of energy or related matters.

C. Minimum Qualifications. To be eligible for consideration for appointment as a Director a candidate must: be a natural person, be eighteen years of age, not have been convicted of a felony in any jurisdiction; and be able to pass any personnel security clearance required by agencies with jurisdiction over any facility that is owned, operated, and/or managed by the Corporation.

D. Additional Considerations Regarding Qualifications. It is reasonable, prudent, and in the best interest of the Corporation to seek candidates for the Board who can contribute certain qualities, skills, and backgrounds, including:

1. Recognition in the CSKT community as being fair, thoughtful, and mindful of the best interests of CSKT as a result of having provided demonstrable leadership in a CSKT enterprise or other CSKT initiative that involved complex issues of importance to the membership of CSKT;
2. Knowledge and experience necessary to develop, manage, and maintain an energy-related business enterprise as a result of having attained the educational and professional background necessary to accomplish demonstrable success and exhibit demonstrable leadership within the energy industry with increasing responsibility and recognition at a senior management or executive level; and/or
3. Knowledge and experience necessary to administer the financial aspects of a business enterprise as a result of having attained the educational and professional background necessary to accomplish demonstrable success and exhibit demonstrable leadership within the financial sector of the business community with increasing responsibility and recognition at a senior management or executive level.

E. Classification and Term of Office.

1. The Directors will be divided into three classes, designated Class A, Class B, and Class C as follows:
  - a. Class A consists of one Director who will have an initial term in office expiring December 31, 2013, or until her/his successor is appointed and takes office.
  - b. Class B consists of two Directors who will have an initial term in office expiring December 31, 2014, or until her/his successor is appointed and takes office.
  - c. Class C consists of two Directors who will have an initial term in office expiring December 31, 2015, or until her/his successor is appointed and takes office.
2. After the expiration of the initial term of Class A, Class B, and Class C Directors, the term of office for each of said classes will be three years commencing on the day following the expiration date of the immediately preceding term of each class.

F. Appointment/Reappointment. Directors will be appointed by the Shareholder and will be eligible for reappointment.

G. Resignation. A Director may resign from the Board at any time, either by oral tender of resignation at any meeting of the Board or by tendering written notice thereof to the Secretary. Such resignation will take effect at the time specified therein, and, unless

otherwise specified, acceptance of such resignation by the Board will not be necessary to render it effective. The Secretary will immediately notify the Shareholder of any resignation.

H. Removal. A Director may be removed by the Shareholder at a meeting of the Shareholder, called expressly for that purpose, whenever, in the judgment of the Shareholder the best interests of the Corporation will be served by such removal.

I. Vacancies. A Director position is vacant whenever the incumbent dies, resigns, fails to attend three consecutive meetings of the Directors without a good excuse, has been removed pursuant to these Bylaws, and/or ceases to have capacity to hold the position under any other provision of law. A vacancy occurring on the Board, and any Directorship that needs to be filled by reason of increase in the number of Directors, will be filled by appointment by the Shareholder. A Director appointed to fill a vacancy will be appointed for the unexpired term of the Director who vacated the vacant position.

J. Regular Meetings. The Board will hold a regular meeting not less than once each month for the purpose of reviewing operations, and the transaction of such other business as may properly come before the meeting. At each monthly meeting the Board will review the preceding month's operations, make plans for the succeeding month's operations, elect officers and/or transact such other business as may properly come before the meeting. The Board will adopt a policy setting a day and time for each of the minimum number of regular monthly meetings and any other regular meetings the Directors wish to establish. If the day scheduled for the regular meeting falls on a day designated as a holiday by the Tribal Council, or is otherwise inconvenient or unsatisfactory in the opinion of the Board or the Chair, then the Chair may schedule another date in lieu of the regularly scheduled meeting date.

L. Special Meetings. The Chair of the Board or any three members of the Board may call a special meeting of the Board. Special meetings will be held at the time and place specified by the person or persons calling such a special meeting.

M. Notice. Except as otherwise provided hereafter in this section, the Secretary will provide reasonable advance notice of not less than five business days of meetings of the Board in a writing delivered in person or mailed to each Director at his or her place of business or other address designated by a Director. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, postage prepaid. Unless otherwise specified in these Bylaws, neither the business to be transacted nor the purpose of any meetings of the Board need be specified in the notice or waiver of notice of such meeting.

N. Waiver of Notice. Any requirement for notice in these Bylaws, in federal law, or in CSKT law may be waived, in writing, by any person or persons entitled to such notice. The waiver of notice may be executed before, during, or after the meeting or event. In lieu of formal delivered and/or mailed notice of Board meetings as required at Article III Section M, all Directors may execute a Call and Waiver Notice that operates to call a meeting of the

Board, state the date, time, and place of such meeting, and unanimously waive any further notice thereof. Any such Call and Waiver Notice will be entered in the minutes of the Corporation. The attendance of a Director at a meeting will constitute a waiver of notice of such meeting, except when a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

O. Quorum. A majority of Directors in office shall constitute a quorum for the transaction of business at any meeting of the Board.

P. Manner of Acting. The action of a majority of the Directors present at a meeting at which a quorum is present will be the action of the Board, unless the action of a greater number is required elsewhere in these Bylaws. Each Director, including the Director presiding at a meeting of the Board, will be entitled to one vote. The aforementioned voting procedures will also apply to Director approval of amendments to these Bylaws.

Q. Remote Participation. A Director may participate in a Board meeting by means of any communications equipment that provides for all persons participating in the meeting to hear one another during the meeting. Any Director so participating will be deemed to be present for purposes of establishing a quorum and for all other meeting purposes.

R. Action by Unanimous Written Consent. Any action that may be taken at a meeting of the Board may be taken without a meeting if consent in writing, setting forth the action to be taken, shall be signed by all of the Directors. Such action by unanimous consent must be initiated by the Chair and all signatures of such written consent must be in the hands of the Chair within 30 days following initiation of such action.

S. Presumption of Assent. A Director who is present at a meeting of the Board will be presumed to have assented to any action taken at such meeting unless the dissent or abstention of such Director will be entered in the minutes of the meeting, or unless such Director will file her or his written dissent or abstention to such action with the person acting as the secretary of the meeting before adjournment thereof. Such right to dissent or abstain will not apply to a Director who voted in favor of such action.

T. Compensation and Expenses. Directors will be compensated for their service on the Board at rates and in amounts that are necessary to ensure that Directors with the qualifications and skills that are necessary to competently perform Board functions can be recruited and retained for service on the Board. The Board will annually review the rates and amounts of such compensation, and when appropriate, will propose adjustments regarding the rates and amounts of such compensation to the Shareholder for ratification. The Shareholder has sixty days from the date of presentment of proposed adjustments to act to ratify or reject such proposed adjustments. If the Shareholder does not take timely action in response to proposed adjustments, then the proposed adjustments will be deemed effective by inaction on the sixty-first day after presentment. Expenses incurred in connection with the performance of her or his official duties may be reimbursed to a

Director consistent with Board policy and procedure. Directors' compensation and expenses will be an expense of the Corporation.

U. Committees. The Board may, by resolution adopted by a majority of the Directors, designate one or more committees, to report to the Board on any subject matter of relevance and importance to the Corporation, each consisting of two or more Directors, to serve at the pleasure of the Board. The Board may designate one or more Directors as alternate members of any committee, who may serve in place of any member of the committee who is absent. The appointment of members or alternate members of a committee requires the vote of a majority of the Directors.

### **Article III: Board Officers**

A. Principal Officers. The principal officers of the Board will consist of a Chair, a Vice-Chair and a Secretary (collectively referred to herein as "Board Officers"). Each Board Officer will be elected by the Board. Other officers and assistant officers as deemed necessary by the Board may be elected by the Board. The Chair and the Vice-Chair will be members of the Board. Any two or more offices may be held by the same person, except the offices of the Chair and Vice-Chair.

B. Election and Term of Office. The Board Officers will be elected annually by the Board at the first regular meeting of the Board held in October of each year. Each officer will hold office until a successor will have been duly elected and accept office, or until death, resignation, or removal.

C. Removal. Any Board Officer may be removed from office, with or without cause, by the Board when, in its judgment, the best interest of the Corporation would be served thereby, but such removal will be without prejudice to the contract rights, if any, of the person so removed.

D. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or other cause, may be filled by the Board for the unexpired portion of the term of office.

E. Chair. If present, the Chair will preside at the meetings of the Board. The Chair will sign, along with the Secretary, or any other officer properly authorized by the Board, any bond, loan, obligation, mortgage, deed of trust, security agreement, lease, credit enhancement agreement, contract, or other legal instrument that the Board has authorized to be executed, except in cases when the signing and execution thereof will be specially delegated by the Board or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed and executed. The Chair will perform such other duties as from time to time may be prescribed by the Board.

F. Vice Chairman. During the absence or incapacity of the Chair, the Vice-Chair may perform the duties of the Chair, and when so acting, shall have all the powers and be

subject to all the responsibilities of the office of the Chair and shall perform such duties and functions as the Board may prescribe.

G. Secretary. The Secretary will keep or cause to be kept the minutes of the meetings of the Board of Directors, see to it that all notices are duly given in accordance with the provisions of these Bylaws, be custodian of the Corporations' records, and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be prescribed by the Chair or the Board.

H. Additional Officers. Officers and assistant officers, in addition to those described above in this Article III, who are elected by the Board will perform such duties as may be prescribed by the Chair or the Board. For purposes of these Bylaws, the term "Corporate Officers" as used herein refers to those executive level managers of the Corporation who are authorized by the Board to perform executive tasks and make executive level decisions.

I. Compensation and Expenses. The Board will, from time to time, subject to approval by the Shareholder, determine a reasonable compensation to be paid to Board Officers for time expended toward performance of their official duties. Expenses incurred by an officer in connection with the performance of her or his official duties may be reimbursed upon approval by the Board. Board Officers' compensation and expenses will be expenses of the Corporation.

#### **Article IV. Capital, Contracts, Checks, Deposits, Finances, Plans, Distributions, Reports and Audits**

A. Capital. Monetary assets of the Corporation will be derived from CSKT appropriation, Corporate borrowing, Corporate earnings, or any other accrual or transfer of funds that results in lawful investment of money in the Corporation. Non-monetary assets of the Corporation will be derived from purchase, assignment, grant, lease and/or other transfer of property to the Corporation from any other party that results in lawful vesting of title to said property in the Corporation.

B. Contracts. The Board may authorize any Corporate Officer or agent to enter into any contract or execute and deliver any legal instrument in the name of and on behalf of the Corporation. The Chief Executive Officer is pre-authorized to enter into any such power purchase and sale agreements in amounts and kinds that are consistent with the Corporation's energy risk management policy and procedures

C. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation will be signed by such Corporate Officer or Corporate Officers, agent or agents of the Corporation and in such manner as will from time-to-time be determined by the Board.

D. Deposits. All funds of the Corporation not otherwise employed will be deposited from time-to-time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

E. Financing. The Corporation, to carry out its purposes and objectives may: borrow money from any person, firm, corporation, or governmental entity; issue bonds, debentures or other obligations; execute and deliver credit enhancement agreements; enter into all necessary or desirable borrowing-related transactions; and may secure the same by any lawful means other than a landed security. Such financial commitments and related security instruments, except for those financial commitments and security instruments that are directly related to power marketing functions discussed below at Section F. of this Article IV, which exceed one million dollars in value will not be effective until approved by the Shareholder.

F. Planning and Execution. The Board will develop and approve an annual operating plan for each year that includes, among other things: energy risk management policy and procedures to be implemented by the Corporation to protect against any imprudent risk that may be created by entering into physical and financial commitments necessary to perform power marketing functions; a budget stating the Corporation's estimated revenues and expenses for the year, including payment by the Corporation of a reasonable annual charge for use and occupancy of the Tribes' lands that are used and useful in operating the Kerr Hydroelectric Project, in amounts and at times as provided in Article 39 of the FERC license for the Kerr Hydroelectric Project; and reserve fund and debt service measures to guide the Corporation in its establishment and maintenance of reserve funds as are necessary for prudent operation, maintenance, financing, and management of the Corporation and in its timely payment of financial commitments as are necessary to satisfy Corporate debts and release Corporate security interests. The Board will develop, update, and approve a five-year capital investment plan each year. The Board will present its approved operating plan and approved five-year capital investment plan to the Shareholder for Shareholder ratification at the second biannual Shareholder's meeting held in July of each year. The Corporation will implement the operating plan as approved by the Board and ratified by the Shareholder. The Corporation will acquire, compile, construct, fabricate and/or assemble only those capital assets that are identified in a five-year capital investment plan as approved by the Board and ratified by the Shareholder.

G. Disbursement. Funds not required for implementation of the annual operating plan or for implementation of the five-year capital investment plan will be disbursed to CSKT. The Chief Executive Officer of the Corporation will diligently seek to consult with the CSKT Director of Finance on or before January 1 of each year regarding standards and criteria for annual end-of-year disbursement of funds from the Corporation to CSKT and thereafter, but no later than April 1 of each year will develop such standards and criteria for presentation to the Board for its approval. The Board will diligently seek to consult with the Shareholder, then will approve, or approve with modifications, the standards and criteria for disbursement of funds recommended by the Chief Executive Officer by no later than the date of its regular meeting held in June of each year.

H. Reporting, Accounting and Financial Records. Financial and accounting records must be maintained and monthly and annual financial and operating reports must be prepared as are customary in a well-managed independent power producer business. The annual report will include the Board's and management's discussions of the past year's operations and plans and strategies of future activities. Annual financial reports must comply with the requirements that are applicable to CSKT and/or the Corporation by the terms of the Federal Energy Regulatory Commission ("FERC") license for the Kerr Hydroelectric Project, the FERC Uniform System of Accounts, and/or the Financial Accounting Standards Board's Generally Accepted Accounting Principles. Any debt issuance associated with revenues received in the Corporation's operations will be recorded on Corporation financial statements as a liability of the Corporation. The Chair of the Board, other individual Directors as determined by the Board, and/or Corporate Officers will report to the Shareholder regarding accounting and financial information requested by the Shareholder.

I. Audits. Annual financial audits will be conducted by a duly licensed public accounting firm selected by the Board or the Board's designee. A representative of the Board will present an annual audit report to the Shareholder during the first biannual Shareholder's meeting held in January of each year.

#### **Article V. Conflict of Interest Transactions.**

Directors, Corporate Officers, agents, and employees of the Corporation are obligated to give notice in writing to the Corporation of any material interest such person has in any entity that seeks to do business with the Corporation and to identify any other real or potential conflict of interest such person has or may have with regard to any contract or transaction of the Corporation. Contracts and all other transactions, including but not limited to power purchase agreements, by and between this Corporation and one or more of its Directors or Corporate Officers, or by and between this Corporation and any individual, association, business organization, or governmental entity of which one or more of the Directors or Corporate Officers of this Corporation are members, partners, officers, or directors, will be valid, binding and enforceable, and will not be voidable by this Corporation or its Shareholder notwithstanding the participation of any such interested Director or Corporate Officer in any meeting of the Board at which such contract or other transaction is considered, acted upon, or authorized, and notwithstanding the participation of any such interested Director or Corporate Officer in the making or performance of any such contract or transaction, if the material facts of such interest are disclosed to or be known by the Directors who are present at the meeting of the Board when such contract or transaction is authorized or approved and if the Board in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum.



## **Article VI. Indemnification of Directors Board Officers, and Corporate Officers**

**A. General.** The Corporation will indemnify each of its Directors, Board Officers, and Corporate Officers, whether or not then in office, and her or his executor, administrator, and heirs, any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation and/or CSKT), by reason of the fact that such person is or was a Director, Board Officer, or Corporate Officer, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with the defense or settlement of such action, suit, or proceedings if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and the CSKT and, with respect to any criminal action or proceedings, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or the entry of a plea of nolo contendere or its equivalent, will not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation and the CSKT, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

**B. Derivative Action.** The Corporation will indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a Director, Board Officer, or Corporate Officer of the Corporation, against expenses (including attorney's fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and CSKT and except that no indemnification will be made in respect of any claim, issue, or matter as to which such person will have been adjudged to be liable for negligence or misconduct in the performance of such person's duty to the Corporation unless and only to the extent that the court in which such action or suit was brought will determine upon application that, despite the adjudication of liability but in views of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**C. Indemnification in Certain Cases.** To the extent that a Director, Board Officer, or Corporate Officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections A and B of this Article VI, or in defense of any claim, issue, or matter therein, she or he will be indemnified against expenses (including attorney's fees) actually and reasonably incurred by such person in connection therewith.

**D. Procedure.** Any indemnification under Sections A and B of this Article VI (unless ordered by a court) will be made by the Corporation only as authorized in the specific case

upon a determination that indemnification of the Director, Board Officer, or Corporate Officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections A and B of this Article VI. Such determination will be made:

1. By the Board by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding; or
2. If such a quorum is not obtainable, or, even if obtainable a quorum of disinterested Directors so directs, then by the Shareholder.

E. Advances for Expenses. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the Director, Board Officer, or Corporate Officer to repay such amount unless it will be ultimately determined that such person is entitled to be indemnified by the Corporation as authorized in this Article VI.

F. Rights Not Exclusive. The indemnification provided by this Article VI will not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any law, by-law, agreement, vote of disinterested Directors, or otherwise, both as to action in such person's official capacity and as to a person who has ceased to be a Director, Board Officer, or Corporate Officer and will inure to the benefit of the heirs, executors, and administrators of such a person.

## **Article VII. Claims Against the Corporation**

The Corporation is an instrumentality of CSKT and is entitled to all of the privileges and immunities of CSKT, except as provided in this Article VII or in the Corporation's Charter. The Corporation has waived such privileges and immunities to the extent provided in the Corporation's Charter. The Corporation may make a further waiver of such privileges and immunities, approved by a resolution duly adopted by the Board, and ratified by the Shareholder, but the resolution will not require approval of the Secretary of Interior.

A. Nothing in these Bylaws, and no waiver of the Corporation's sovereign immunity pursuant to this Article will be construed as a waiver of the sovereign immunity of CSKT or any other instrumentality of the CSKT, and no such waiver by the Corporation will create any liability on the part of CSKT or any other instrumentality of CSKT for the debts and obligations of the Corporation, or will be construed as a consent to the encumbrance or attachment of any property of CSKT or any other instrumentality of CSKT based on any action, adjudication or other determination of liability of any nature incurred by the Corporation.

B. Nothing in these Bylaws, and no action taken by the Corporation pursuant to these Bylaws, will be construed as permitting, recognizing, or granting the State of Montana any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of the Flathead Reservation.

### **Article VIII. Fiscal Year**

The fiscal year of the Corporation will be from October 1 to September 30, inclusive.

### **Article IX. Amendments**

These Bylaws may be amended by a vote of a majority of the Directors at any meeting of the Board at which a quorum is present, subject to ratification by the Shareholder. No amendments to these Bylaws will impair any existing contracts with the Corporation, or any of the Corporation's bonds or other contracts with bondholders or credit enhancement providers.

### **Article X. Shareholder's Directive**

The Shareholder may augment, clarify, and/or add detail to the requirements of the Corporation's Federal Charter of Incorporation and these Bylaws by issuing a Shareholder's Directive to the Board regarding the Shareholder's policies for implementation of the Corporation's Federal Charter of Incorporation and/or these Bylaws. In the event said Shareholder's Directive is inconsistent with or in conflict with the Corporation's Federal Charter of Incorporation and/or these Bylaws, then the Corporation's Federal Charter of Incorporation and/or these Bylaws will control.

### **Article XI. Emergency Bylaws.**

A. The emergency bylaws provided in this Article will be operative during any emergency in the conduct of business of the Corporation resulting from an attack on the United States, any nuclear or atomic disaster, or any natural force that presents a real and present danger to the existential integrity of the Kerr Hydroelectric Project. To the extent not inconsistent with the provisions of this Article, the bylaws provided in the preceding articles will remain in effect during such emergency and upon its termination these emergency bylaws will cease to be in effect.

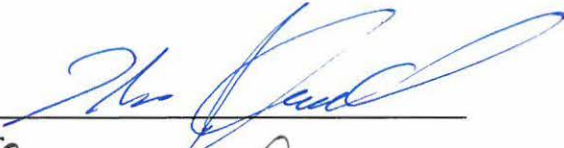
B. During such emergency:

1. A meeting of the Board may be called by any Director or Corporate Officer. Notice of the time and place of the meeting will be given by the person calling the meeting to those Directors who are feasible to contact by any available means of communication. Such notice will be given at such time in advance of the meeting as circumstances permit in the judgment of the person calling the meeting.
2. At any such meeting of the Board, a quorum will consist of a majority of those Directors in attendance.
3. The Board may provide, and from time-to-time modify, lines of succession in the event that during such an emergency any or all officers or agents of the Corporation will for any reason be rendered incapable of discharging their duties.

- 4. The Board may, effective during the emergency, designate an alternative head office for the Corporation.

**Adoption of Bylaws by Board of Directors:**

We, the undersigned, Directors of Sx<sup>w</sup>nqe?els l Suwečm / Ksuk~~ti~~muma~~ʔ~~ A·ka~~m~~ukwa'its, d.b.a. Energy Keepers, Incorporated ("Corporation"), do hereby certify that the above and foregoing bylaws were duly adopted as the bylaws of the Corporation at a special meeting of the Board of Directors held on the 5th day of November, 2012, and that the same do now constitute the bylaws of the Corporation.


  
\_\_\_\_\_

Director

  
\_\_\_\_\_

Director


[ Corporate Seal ]

  
\_\_\_\_\_

Director

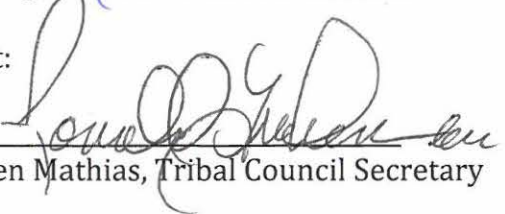
**Ratification of Bylaws by Shareholder:**

The Bylaws of Energy Keepers, Incorporated ("Corporation") are hereby ratified by the Tribal Council of CSKT in the Tribal Council's official collective capacity as Shareholder of the Corporation on the 13th day of November, 2012 by a vote of 10 for and 0 opposed, and 0 not voting, pursuant to the authority reserved to the Tribal Council as Shareholder of the Corporation by Article VI, Section I of the Federal Charter of Incorporation for Energy Keepers, Incorporated. This ratification is made effective by signature of the Chairman and Secretary of the Tribal Council, in their official capacities as Shareholder's Representatives.

  
\_\_\_\_\_

Joe Durglo, Tribal Council Chairman

Attest:

  
\_\_\_\_\_

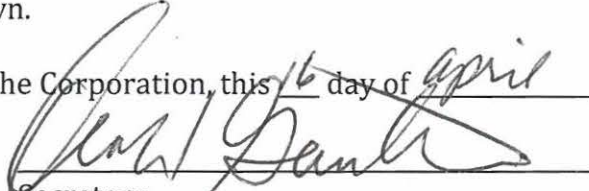
Reuben Mathias, Tribal Council Secretary

**Certificate of Correctness of Copy of Bylaws:**

State of Montana                   \*  
  \*           SS  
County of Lake                    \*

I, Robert Gauthier, Secretary of Sx<sup>w</sup>nqe?els l Suwečm / Ksuk#muma# 'A-ka#mukwa'its, d.b.a. Energy Keepers, Incorporated ("Corporation"), do hereby certify that the above and foregoing consisting of 13 pages in printed form is a true and correct copy of the Bylaws of the Corporation, as in effect as of the 13 day of November, 2012 and also those parts of the records of the Corporation that show the original adoption of its Bylaws; and all amendments down to the date here shown.

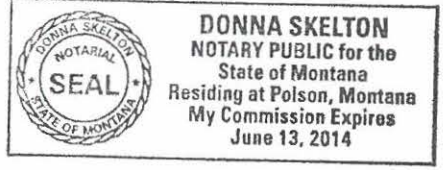
Witness my hand and the official seal of the Corporation, this 16 day of April, <sup>2013</sup>2012.

  
Secretary

Subscribed and sworn to before me, a notary public, this 16<sup>th</sup> day of April, <sup>2013</sup>2012

Donna Skelton  
Notary Public

My Commission Expires: June 13, 2014



# **ATTACHMENT C**

## ATTACHMENT C

### ENERGY KEEPERS, INCORPORATED, BOARD OF DIRECTORS

EKI has a Board of Directors that includes five members appointed by the CSKT Tribal Council in its capacity as Shareholder's Representative. Because of the complex nature of the power industry, the unprecedented nature of the Kerr Dam conveyance process, and the challenging nature of managing a major hydropower facility, CSKT established more specific qualifications for the Board of Directors of Energy Keepers, Inc. than CSKT has for its other corporations. Three Directors are expected to be enrolled members of CSKT, with expertise in the field of energy or related business management. The remaining two Directors are expected to have knowledge and experience necessary to develop, manage, and maintain an energy-related business enterprise and/or the financial aspects of the business enterprise as a result of having attained the educational and professional background necessary to accomplish demonstrable success and leadership within the energy industry.

Each board member will have three-year reappointment eligibility after their initial term.

Currently, all five Board of Directors positions are filled. A brief description of each Director's professional experience and/or other pertinent qualifications are as follows:



Thomas J. Farrell  
Board Chairman  
Term expires: 12-31-2015

Mr. Farrell is an enrolled member of CSKT and brings with him experience in both the energy and financial industries. He has spent the majority of his career working in Houston, TX, working in managerial roles for many accounting and energy firms. He began his career at Houston Lighting and Power where he served as Accounting Manager, Manager of Financial Reporting, and ultimately Controller. Thereafter he worked for Reliant Energy (a/k/a Centerpoint Energy) where his work as Executive Manager provided a strong background to serve as Chairman of the Board, managing accountants for a multi-billion dollar corporation. Currently, Mr. Farrell is a Certified Public Accountant.



Daniel F. Decker  
Board Vice Chair  
Term expires: 12-31-2015

Mr. Decker is an enrolled member of CSKT and has been practicing law for over 32 years after receiving his Juris Doctorate from the University of Montana. He served as legal counsel for CSKT until CSKT formally instituted a legal department, at which point Decker was chosen as the legal department's first managing attorney. Decker has also been Partner at Monteau, Guenther and Decker. Currently, he's Partner at the Law Office of Decker & Desjarlais, a firm that specializes in Federal Indian Law on behalf of Indian tribes and tribally-owned businesses.



Robert Gauthier  
Board Secretary  
Term expires: 12-31-2014 [*reappointed through 12-31-2017*]

Mr. Gauthier is an enrolled member of CSKT and has many years of experience working with Tribal businesses, specializing in Real Estate, Housing and Consumer Credit Counseling. He has been the owner of multiple businesses including Ahoy Leasing & Development, Gauthier Agency, and Gauthier's Steakhouse and Seafood. He's also served in Director and Managerial roles for the Salish Kootenai Housing Authority, Consumer Credit Counseling Office of CSKT, as well as been General Agent and Broker for Gauthier-Walters Agency.





Thomas A. Babineau

Board Member

Term expires: 12-31-2014 [*reappointed through 12-31-2017*]

Mr. Babineau brings to EKI a background of working with start-ups and business development ventures. He has been General Manager at Zurn Industries, a multi-national conglomerate that operated in the Combined Cycle Power Industry and mechanical power transmission markets. He's also been President at Core Motion, Inc., which focused on proprietary electric motor platform technology. His latest position was Senior Vice President of Business Development at Rypos, Inc., which specializes in on-site and distributed power generation and environmental emission control systems.



Lon Topaz

Board Member

Term expires: 12-31-2015

Mr. Topaz has an extensive background in the energy industry, specifically in California and the Pacific Northwest. He began as a Founding General Manager at Emerald People's Utility District in Eugene, Oregon. He later was the Assistant General Manager for Sacramento Municipal Utility District, where he was involved in construction of new power plants and rate making. Mr. Topaz then moved into a role as Integrated Resource Manager for the City of Anaheim, where he controlled the city's generation facilities, energy trading and planning for new resources. He then became Director of Resource Management at Grant County P.U.D. in Washington state, where he was responsible for power management, river dispatch, energy trading and hydro relicensing. His latest position was with REC Silicon, where he served as the Energy Resource Manager, procuring over 130 MW of power for corporate facilities.

Document Content(s)

2015-04-14 P-5 Application.PDF.....1-49