

Explanatory Note

To

By-Law No. 2019-35 Shareholder Direction

The purpose of the bylaw is to repeal and replace By-law 2000-65, and its amendments, and to adopt a new Shareholder Direction for Geosands Inc. and its subsidiaries Wasaga Distribution Inc., Wasaga Resource Services Inc., and Wasaga Genco Inc.

The Shareholder Direction by-law was reviewed due its age (over 18 years) and to ensure consistency with Ontario Energy Board (OEB) existing regulations and upcoming amendments. It was determined that a new by-law be drafted to also addresses oversight and governance, the process and terms of board appointments, and reporting to the shareholder regarding business, strategic plans and meeting records.

The Board Chair provided comments to the draft by-law for consideration, some of which have been incorporated into the final version attached hereto.

THE CORPORATION OF THE TOWN OF WASAGA BEACH

BY-LAW NO 2019-35

A By-law to adopt a Shareholder Direction and to repeal By-law 2000-65, as amended

WHEREAS pursuant to section 9 of the *Municipal Act*, 2001 S.O. 2001, chapter 25 a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS pursuant to section 8. (1) of the *Municipal Act*, 2001 S.O. 2001, chapter 25 the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate to enhance the municipality's ability to respond to municipal issues;

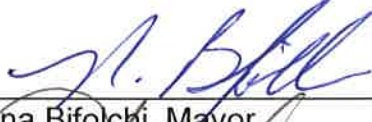
AND WHEREAS Geosands Inc. is a corporation incorporated under the Business Corporations Act (Ontario) and the Town of Wasaga Beach is the sole shareholder of said Corporation;

NOW THEREFORE this Council of the Corporation of the Town of Wasaga Beach **HEREBY ENACTS** as follows:

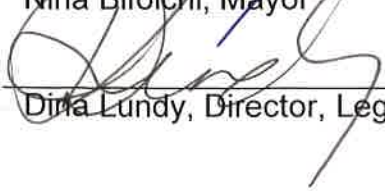
1. THAT Appendix 'A' Shareholder Direction attached hereto is hereby adopted, and forms part of this By-law.
2. THAT Appendix 'A' Shareholder Direction is hereby adopted to replace the Shareholder Direction enacted through By-law 2000-65 dated October 24, 2000, as amended from time to time.
3. THAT By-law 2000-65, and any amendments thereto are hereby repealed.
4. THAT this By-Law shall come into force and take effect on the date of its final passing.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 30TH DAY OF APRIL, 2019.

THE CORPORATION OF THE TOWN OF WASAGA BEACH



Nina Bifulchi, Mayor



Dina Lundy, Director, Legislative Services & Clerk

APPENDIX 'A' OF BY-LAW 2019-35

SHAREHOLDER DIRECTION

WHEREAS, Geosands Inc. (the "**Corporation**"), is a Corporation incorporated under the *Business Corporations Act* (Ontario) (the "**OBCA**").

AND WHEREAS the Corporation of the Town of Wasaga Beach (the "**Shareholder**") is the sole registered and beneficial owner of all of the issued and outstanding shares of the Corporation.

AND WHEREAS the Corporation is the sole registered and beneficial owner of all of the issued and outstanding shares of Wasaga Distribution Inc. (the "**Distribution Subsidiary**"), Wasaga Resource Services Inc. ("**WRSI**") and Wasaga Genco Inc. ("**WGI**").

AND WHEREAS the Corporation and its Subsidiaries (as defined below) are the successors to the electricity operations formerly carried on by the Hydro Electric Commission of the Town of Wasaga Beach (the "**Electricity Business**").

AND WHEREAS the Electricity Business is subject to the provisions of the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998*, being Schedules A and B respectively to the *Energy Competition Act, 1998*, as such statutes may be amended, re-enacted, consolidated or replaced from time to time, and any successor statute thereto.

NOW THEREFORE THIS SHAREHOLDER DIRECTION WITNESSES:

ARTICLE I INTERPRETATION

1.1 Definitions

Throughout this Shareholder Direction, except as otherwise expressly defined, the following terms shall have the following corresponding meanings:

"Board" means a board of directors of a corporation.

"Corporate Group" means the Corporation and its Subsidiaries, as illustrated on the organizational chart attached as Schedule "A" hereto.

"Council" means the council of the Corporation of the Town of Wasaga Beach.

"Financial Statements" means, for any particular period, audited, consolidated, comparative financial statements for a corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of cash flow, a report or opinion of the auditor and such other statements, reports, notes and information prepared in accordance with the applicable generally accepted accounting principles (consistently applies) and as are required in accordance with any applicable law.

"OEB" means the Ontario Energy Board.

"Person" means any individual, corporation, firm, partnership, sole proprietorship, syndicate, joint venture, trustee, trust, any unincorporated organization or association.

"Regulator" means the OEB, the Independent Electricity Market Operator and all other governmental or regulatory authorities having jurisdiction over the Corporate Group or any one of them.

"Subsidiary" means with respect to the Corporation, any corporation of which shares, to which are attached more than fifty per cent (50%) of the voting rights ordinarily exercisable, are beneficially owned, directly or indirectly, by the Corporation, and includes as at the date hereof the Distribution Subsidiary, WRSI and WGI, and any corporation in like relation to a Subsidiary;

"Third-Party" means a Person who deals at arm's length (as interpreted by subsection 251(1) of the *Income Tax Act* (Canada)) with the Corporate Group.

"Town's Appointment Policy" means the Town of Wasaga Beach's Policy for the Public Appointments by Council to Advisory Committees, Local Boards and External Boards and Committees, as the same may be amended, restated or replaced from time to time.

1.2 Regulatory Matters

In the event of any conflict between any approval, direction or other requirement of the Shareholder pursuant to this Shareholder Direction and any decision, order or policy of any Regulator, the decision, order or policy of the Regulator shall govern and the Corporation and its Subsidiaries will at all times comply with any decision, order or policy of the Regulator whether or not an approval or direction has first been given in connection therewith by the Shareholder pursuant to this Shareholder Direction. For the avoidance of doubt, the Corporation shall not seek any order from any Regulator for any matter which would require the approval of the Shareholder under this Shareholder Direction without first obtaining the consent and prior approval of the Shareholder to its seeking such an order.

1.3 Headings

The division of this Shareholder Direction into Articles and Sections is for convenience of reference only and shall not affect the interpretation of this Shareholder Direction.

1.4 Governing Law

This Shareholder Direction shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

ARTICLE II OBJECTIVES AND PRINCIPLES

2.1 Purpose

The purpose of this Shareholder Direction is to express the Shareholder's fundamental principles regarding the operation of the Electricity Business and to set out the accountability, responsibility and relationship between the Boards of the Corporation and its Subsidiaries and the Shareholder.

2.2 Shareholder Objectives

The Shareholder's objective in connection with its relationship with the Corporate Group and the Electricity Business is that the Board of the Corporation supervise the management of the business and affairs of the Corporation and its Subsidiaries in a manner that:

- (a) ensures that the Corporate Group is operating in a manner that is in compliance with the rules and regulations promulgated by the Regulators and other applicable law;
- (b) ensures that the value of the Corporate Group is maintained or increased over time;
- (c) protects the investment of the Shareholder by managing the exposure of the Corporate Group to risks inherent in the Electricity Business through the development of a sustainable strategic planning process and risk management strategy;
- (d) provides the Shareholder with a reasonable rate of return on its investment, as permitted by the Regulators and applicable law;
- (e) maintains adequate independence of the Corporate Group while providing to the Shareholder adequate information, reporting and oversight of the Corporate Group, as permitted by the Regulator and applicable law;
- (f) establishes and maintains an appropriate and sustainable financial and capital structure for the Corporate Group, giving due consideration to the rules and regulations promulgated by the Regulators; and
- (g) provides energy services in an environmentally responsible and sustainable manner.

ARTICLE III BUSINESS OF THE CORPORATION

3.1 Business of the Corporation

Subject to the ongoing ability of the Corporation to meet the financial objectives of the Shareholder set out in this Shareholder Direction, the Corporation and its Subsidiaries may, subject to the terms of this Shareholder Direction, engage in any business activity permitted by law and by the Corporation's Regulators.

ARTICLE IV GOVERNANCE OF THE CORPORATE GROUP

4.1 Board of Directors of the Corporation

The business and affairs of the Corporation shall be managed, subject to the terms of this Shareholder Declaration, by a Board which shall consist of five (5) Directors nominated by the Shareholder, one of whom shall at all times be the Mayor of the Town of Wasaga Beach or his or her designate from Council.

The remaining four (4) Directors of the Corporation's Board shall be selected in accordance with Town's Appointment Policy, subject and having regard to the requirements for a Board member set out in Section 4.3 and provided that at least a majority of the members of such Board shall be independent from any other affiliated entity (including other members of the Corporate Group), including the Shareholder.

The Directors of the Corporation's Board shall be appointed for such terms as the Shareholder sees fit; provided, however, that (i) no Director, with the exception of the Mayor, shall serve for a term in excess of five (5) consecutive years in total, and (ii) the Shareholder shall use its reasonable efforts to establish staggered terms for the members of the Board of the Corporation in order to ensure continuity of governance.

If a member of the Board of the Corporation ceases to be a director for any reason, the Shareholder shall nominate and elect an individual to fill the vacancy in accordance with the Town's Appointment Policy, subject and having regard to the requirements for a Board member set out in Section 4.3 and provided that at least a majority of the members of such Board shall be independent from any other affiliated entity (including other members of the Corporate Group), including the Shareholder

The Board of the Corporation shall govern itself in accordance with the standards set out in the OBCA, and the requirements of the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, the rules and regulations promulgated thereunder and any other applicable law, including, without limitation, any applicable law regarding conflicts of interest, the disclosure thereof and any abstention of voting in respect thereof.

4.2 Board of Directors of the Subsidiaries

The business and affairs of the Subsidiaries shall be managed, subject to the terms of this Shareholder Declaration, by a Board which shall consist of five (5) Directors

nominated by the Corporation at the direction of the Shareholder, one of whom shall at all times be the Mayor of the Town of Wasaga Beach or his or her designate from Council.

The remaining four (4) Directors of the Subsidiary' Board shall be selected in accordance with Town's Appointment Policy, subject and having regard to the requirements for a Board member set out in Section 4.3 and provided that at least a majority of the members of each such Board shall be independent from any other affiliated entity (including other members of the Corporate Group), including the Shareholder.

The Directors of the Boards of the Subsidiaries shall be appointed by the Corporation for such terms as directed by the Shareholder; provided, however, that (i) the Corporation shall not permit any Director, with the exception of the Mayor, to serve for a term in excess of five (5) consecutive years in total, and (ii) the Shareholder shall use its reasonable efforts to establish staggered terms for the members of the Boards of the Subsidiaries in order to ensure continuity of governance.

If a member of the Board of the any Subsidiary ceases to be a director for any reason, the Corporation shall nominate and elect an individual to fill the vacancy selected by the Shareholder in accordance with the Town's Appointment Policy, subject and having regard to the requirements for a Board member set out in Section 4.3 and provided that at least a majority of the members of each such Board shall be independent from any other affiliated entity (including other members of the Corporate Group), including the Shareholder.

The Corporation agrees that the Shareholder may take such steps on behalf of the Corporation as are necessary or desirable to remove a director of the Board of any Subsidiary in accordance with section 122 of the OBCA, provided that the Shareholder has first provided the Corporation with written notice of the proposed removal. The Corporation shall take all steps as may be necessary or desirable to effect the removal and/or replacement of such director of the Board of any Subsidiary upon direction from the Shareholder to effect same.

The Corporation shall direct the Board of each Subsidiary to govern itself in accordance with the standards set out in the OBCA, and the requirements of the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, the rules and regulations promulgated thereunder and any other applicable law, including, without limitation, any applicable law regarding conflicts of interest, the disclosure thereof and any abstention of voting in respect thereof.

The Corporation shall take all steps as may be necessary to enforce this provision and the Shareholder's rights hereunder, which may include the entering into a shareholder declaration in respect of each Subsidiary if so directed by the Shareholder.

4.3 Qualifications of Directors

The Board of each entity in the Corporate Group shall be constituted so that at least a majority of such Board shall be Canadian residents.

In addition to independence of judgment and integrity, the following qualifications shall be viewed as favourable attributes to be considered by the Shareholder in the nomination of members of each such Board:

- a) business experience;
- b) experience in strategic planning;
- c) human resource and management experience;
- d) enterprise risk management experience;
- e) experience on boards of significant corporations;
- f) financial, legal, accounting (including audit committee) and/or marketing experience;
- g) industry knowledge, including experience in the Electricity Business;
- h) experience with Regulators;
- i) experience in corporate governance in a municipal shareholder environment;
- j) knowledge of public policy issues relating to the Corporation; and
- k) any additional skills or qualities as may be consistent with industry best practices or identified by the OEB as beneficial and/or set forth in any OEB guidelines on governance practices from time to time,

and a matrix approach should be used to compile an inventory of director skills in order to ensure that each such Board, in its entirety, has a broad skillset represented.

4.4 Compensation

The Shareholder shall establish compensation for the members of the Boards of each entity in the Corporate Group in an amount sufficient to attract candidates with necessary qualifications and consistent with industry norms and standards for comparable business. The Shareholder may seek advice of the Board of the Corporation or outside advisors to determine the appropriate amount of compensation for such directors. Once set, compensation for the directors shall remain the same until such time as it is changed by the Shareholder who shall review such compensation from time to time. The Corporation shall take any steps as may be necessary to ensure that the compensation determined by the Shareholder is applicable to the Boards of the Subsidiaries, which may include the entering into a shareholder declaration in respect of each Subsidiary if so directed by the Shareholder.

ARTICLE V SHAREHOLDER MATTERS

5.1 Decisions of the Shareholder

The following will apply to any approvals or decisions that the Shareholder must provide under this Shareholder Direction or as a matter of corporate authority:

- (a) all approvals and decisions will be subject to a duly passed resolution of the Council and shall be made in writing and signed by the authorized signatory of the Shareholder; and
- (b) no approval will be given unless the Shareholder has reasonable advance notice in writing of the need for such approval and the Corporation has provided such information as is reasonably necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval.

5.2 Matters Requiring Shareholder Approval

Neither the Corporation nor any Subsidiary will, without the approval of the Shareholder (or the Corporation, as shareholder of the Subsidiaries, in which case the Corporation shall not give such approval without the prior approval of the Shareholder):

- (a) amend its articles or make, amend or repeal any by-law, other than any by-laws which are procedural in nature and relate to the conduct and process for meetings of the applicable entity's board of directors;
- (b) change its corporate name;
- (c) amalgamate or apply to continue as a body corporate under the laws of another jurisdiction, merge, consolidate or reorganize, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- (d) take or institute proceedings for any winding up, arrangement, reorganization or dissolution;
- (e) create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities;
- (f) sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking, or enter into any transaction for the sale or disposition of an asset for a purchase price of value equal to or in excess of \$100,000.00;
- (g) change its auditor;
- (h) make any change to the number of directors of its board;

- (i) enter into any transaction or take any action that requires shareholder approval pursuant to the OBCA;
- (j) issue, or enter into any agreement to issue, any share of any class, or any securities convertible into any shares of any class;
- (k) redeem, purchase for cancellation or otherwise retire any of its outstanding shares;
- (l) establish any requirement for capital contributions by its shareholder;
- (m) provide any financial assistance to any of its directors or officers;
- (n) borrow money or grant a security interest in or otherwise encumber its assets except (i) for borrowings in an amount less than \$[100,000.00], or (ii) as set out in the Business Plan;
- (o) make capital expenditures in an aggregate amount exceeding 50% of the amount budgeted for capital expenditures in the current Business Plan;
- (p) purchase or lease any real property or other material asset not included in the Business Plan having a purchase price exceeding \$[100,000.00];
- (q) take any steps to alter the strategic direction of the Corporate Group that deviates in a material way from the Strategic Plan;
- (r) hire or terminate any chief executive officer (or equivalent) and/or amend, extend or otherwise vary the terms of employment of any chief executive officer (or equivalent);
- (s) enter into any transaction that will incur or cause to be incurred transfer tax under Section 94 of the Electricity Act;
- (t) make any decision that would materially adversely affect the tax or regulatory status of a member of the Corporate Group; or
- (u) engage in the business of direct power procurement.

5.3 Unanimous Shareholder Agreement

Section 5.2 shall constitute a Unanimous Shareholder Declaration pursuant to the OBCA.

ARTICLE VI REPORTING AND INFORMATION RIGHTS

6.1 Business and Strategic Planning

Ever four years beginning with the 2022 fiscal year end, within 120 days of the fiscal year end, the Board shall approve and submit to the C.A.O. of the Shareholder an

updated strategic plan for the Corporate Group (the "**Strategic Plan**") developed in consultation with each of the Subsidiaries and their respective boards of directors, which Strategic Plan shall set out the strategic direction for the Corporate Group for the following four years and identify a set of strategic priorities and goals, in each case having regard to the Shareholder Objectives set out in section 2.2 of this Shareholder Direction.

Not later than thirty (30) days prior to the end of each fiscal year, the Board will approve and submit to the C.A.O. of the Shareholder a consolidated three (3) year business plan for the Corporate Group (the "**Business Plan**"). In the event that the Corporation notifies the Shareholder that the Business Plan contains sensitive commercial information, or in the event that the Council wishes to receive any information in camera then to the extent permissible by law, the Business Plan or any other information shall be received in camera by the Council. The Business Plan will be prepared on a consistent basis with the Business Plan then in effect. The Business Plan shall include, in respect of the period covered by such plan:

- (a) any new business initiatives that the Corporate Group will undertake;
- (b) an operating and capital expenditure budget for the next fiscal year including the resources necessary to implement the Business Plan;
- (c) *pro forma* consolidated Financial Statements for each fiscal year, including projected dividend payments to the Shareholder;
- (d) an acquisition budget setting forth the nature and type of capital expenditures proposed to be made in the following fiscal year, supported by explanations, notes and information upon which the budget was based;
- (e) energy conservation programs and environmental plans;
- (f) any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the Shareholder; and
- (g) any material variances from the Business Plan then in effect.

6.2 Access to Books and Records

The duly appointed representatives of the Shareholder (as approved to report to Council from time to time) shall have unrestricted access to the books and records of each entity in the Corporate Group, including without limitation, the minutes and resolutions of the Boards of each entity in the Corporate Group. Such representatives shall treat all information of the Corporate Group with the same level of care and confidentiality as any confidential information of the Shareholder.

6.3 Audited Financial Statements

The consolidated and unconsolidated Financial Statements of each entity in the Corporate Group shall be audited annually, and the Corporation shall not waive the

audit requirement for any or the Subsidiaries. The auditor of each entity in the Corporate Group shall be appointed by the Shareholder (the "**Auditor**"). The Board of the Corporation shall engage the Auditor to deliver, as soon as practicable and in any event within one hundred and twenty (120) days after the end of each fiscal year, the audited consolidated Financial Statements of the Corporation for consideration by the Shareholder.

6.4 Accounting

The Corporation will, in consultation with the Auditor, adopt and use the accounting policies and procedures which may be approved by the Board of the Corporation from time to time and all such policies and procedures will be in accordance with generally accepted accounting principles and applicable regulatory requirements.

6.5 Reporting of Major Developments

Not later than 120 days after the end of each fiscal year, the Board of the Corporation will submit to the C.A.O. of the Shareholder a report of the previous fiscal year's activities of the Corporation. The report shall include the following:

- (a) audited consolidated Financial Statements for the preceding fiscal year;
- (b) any material variances in the ability of any business to meet or continue to meet the financial objectives of the Shareholder; and
- (c) any material variances from the Business Plan then in effect.

In addition to the other reporting requirements set out in this Article VI, the Board of the Corporation shall report to Council on major business developments or the existence of circumstances that have or may give rise to material adverse effects, and such reports received may to the extent permissible by law be considered by the Shareholder at an in camera meeting of Council.

6.6 Amendments

The provisions of this Shareholder Direction are subject to review and revision by the Shareholder at its discretion from time to time. This Shareholder Direction may be amended solely at the discretion of the Shareholder. The Shareholder will provide prior written notice to the Board of the Corporation of any proposed amendments to this Shareholder Direction.

SCHEDULE "A"

