



**The Municipal Corporation of the
Town of Fort Erie**

BY-LAW NO. 65-2000

**BEING A BY-LAW TO AUTHORIZE THE ENTRY INTO AN AGREEMENT
WITH 886369 ONTARIO LTD. (SOFTCOM) FOR
WIRELESS INTERNET ACCESS SERVICES
(L04.907)**

WHEREAS By-law No. 54-2000 was passed at the Council meeting of March 27, 2000 authorizing the entry into a Strategic Alliance Agreement with 886369 Ontario Ltd. carrying on business as Softcom (hereinafter called "Softcom"), and

WHEREAS the parties to the agreement are desirous of increasing the effectiveness of both organizations by strategically partnering resources and sharing expertise where possible, and

WHEREAS Report No. CAO-01-1-2000 was approved at the Council-in-Committee meeting of March 20, 2000 authorizing the entry into a Strategic Alliance Agreement with Softcom to further promote and advance the use of the internet by the Town of Fort Erie, local organizations and businesses, and

WHEREAS Softcom is the single local internet service provider (ISP) who has recently acquired a high speed line and that line is used as their connection to the internet, and

WHEREAS By-law No. 54-2000 authorizes a Strategic Alliance Agreement with Softcom, and

WHEREAS the terms and conditions of the agreement have been settled and agreed upon in the form of Schedule "A" annexed hereto to this by-law;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

- (1) **THAT** the entry into an agreement with Softcom in the form as Schedule "A" annexed hereto to this by-law for wireless internet access services be and it is hereby authorized and approved.
- (2) **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the agreement and to affix the corporate seal thereto.

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- (3) THAT Tendering By-law No. 191-95 as amended be and it is hereby waived since there is only one internet service provider in Fort Erie.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 25TH DAY OF APRIL, 2000.


MAYOR


CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 65-2000 of the said Town. Given under my hand and the seal of the said Corporation this day of , 2000.

SCHEDULE "A" TO BY-LAW NO. 65-2000

This Agreement made in triplicate this 28th day of April, 2000.

B E T W E E N:

THE CORPORATION OF THE TOWN OF FORT ERIE

hereinafter called the "Town"

OF THE FIRST PART;

- AND -

**(886369 ONTARIO LTD.) CARRYING ON BUSINESS AS
SOFTCOM**

hereinafter called the "Company"

OF THE SECOND PART;

WHEREAS the parties agreed to enter into a Strategic Alliance Agreement to further promote and advance the use of the Internet by the Town of Fort Erie, local organizations and businesses, and;

WHEREAS the Strategic Alliance Agreement sets out the vision and intent of the parties, and;

WHEREAS the parties are interested in exchanging services and compensation in order to provide high-speed Internet access through radio or wireless equipment, and;

WHEREAS the Company has agreed to provide high-speed wireless Internet access services (hereinafter called "the services") to the Town and other customers located in the vicinity of the Company's place of business, and;

WHEREAS the Town has a communications tower located at the Leisureplex which will be used to complete the link between the Company and provision of the services, and;

WHEREAS in exchange for the Town committing to build and construct its part of the wireless link at its expense and committing to pay the Company in advance for the services, the goals of the parties will be realized;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions hereinafter set forth the parties hereto mutually agree as follows:

1. Term

The term of this agreement shall be from April 26, 2000 to May 31, 2003.

2. Internet Service

The Company agrees to provide Internet service to the Town for the period on or about June 1, 2000 to May 31, 2003.

3. The Town agrees to:

- (a) Construct at its own expense to a maximum of \$15,000.00 its end of the wireless link to the Leisureplex communications tower using equipment mutually agreed upon by the parties and set out in Article 4(b)(i) herein.
- (b) The Town shall pay to the Company for the provision of the services an amount of \$9,630.00 upon the execution of this agreement and an additional \$9,630.00 upon delivery of the internet service contemplated by this agreement. Subject to Article 3(c) herein, such payments are inclusive of g.s.t. and shall be due and final payment for the provision of the aforesaid services during the term of this agreement. The above consideration includes \$3,000.00 representing the Town's contribution to the location of a tower by the Company at Albany Place Apartments in Fort Erie.
- (c) Renegotiate the Company's monthly internet fee if the average monthly usage over three consecutive months exceeds 512Kbit/sec.

4. THAT the Company agrees to:

- (a) Construct at its own expense its end of the wireless link between the Company tower and the Leisureplex communications tower.
- (b) In connection with Section 3(a) above, the Company shall provide the wireless link equipment to the Town at cost comprised of the following:
 - (i) A radio link with a rated transmission rate of not less than 3mbit/sec. Over this link, the Company shall provide access to their Internet link at a guaranteed rate of no less than 265kbits/sec and a burstible rate of no less than 1.5mbit/sec.
 - (ii) One Hundred & Twenty-Eight (128) consecutive IP (Internet Protocol) addresses as required by the Town. The Company shall also provide the Town with the use of a secondary dns server.
 - (iii) Wi Lan wireless equipment.
- (c) To provide services required by the Town in order to permit the Town to change from its current Internet provider to the Company.

- (d) To provide monthly Internet use reports to the Town.
- (e) To provide project management services and to oversee the installation of the equipment at the Leisureplex communications tower which shall be subject to the final approval of the Town.
- (f) To indemnify and save harmless the Town from and against all actions, suits, claims and demands (collectively "claims") of all persons whomsoever which may be brought against or made upon the Town and from all loss, expenses, costs, charges, demands, indemnities and/or liability which may be sustained, paid or incurred by the Town by reason of, arising out of, or in consequence of, this agreement or the operations of the Company.
- (g) To provide, at their own expense, general liability insurance including products liability for the sum of \$2,000,000.00 insuring the Town in respect of any claim or claims for damages, injury or death by reason of, arising out of, or in consequence of, this agreement and the operations of the Company and shall include the Town as an additional insured therein. The Company agrees to keep the said policy in force during the term of this agreement and at least one month prior to the date of expiry of the insurance policy, shall provide the Town with proof that the policy has been renewed and the premium paid. If the said premium is not paid by the date aforesaid, the Town shall be entitled to terminate this agreement forthwith.
- (h) To indemnify the Town against all liabilities, claims, damages or expenses (collectively "claims") arising out of any act or neglect of the Company, their servants, employees, agents, invitees or licensees in and about the premises, under the ownership, control or possession of the Company as may be used for the project, or arising out of any breach, violation or non-performance by them of any provision of this agreement, including liability for injuries or damage to the persons or property of the Company's servants, employees, agents, invitees or licensees.
- (i) Upon execution of this agreement the Company shall provide the Town with a chattel mortgage on the equipment in a form satisfactory to the Treasurer of the Town.

5. Termination

Either party may terminate this agreement by giving sixty (60) days written notice to the other party. Upon termination by the Company, the Town shall receive a refund forthwith from the Company in an amount equal to the pro-rated amount based on the remaining numbers of months in this agreement.

Should the Company not be able to provide the services as contemplated by this agreement within ninety (90) days of the commencement of this agreement, this agreement shall become null and void and all monies paid by the Town to the Company shall be returned forthwith.

6. Assignment

Subject to the provisions of Article 5 herein this agreement shall adhere to the benefit of any successors or assigns of either party.

IN WITNESS WHEREOF the Mayor and Clerk of the Corporation of the Town of Fort Erie have hereunto set their hands and affixed the Corporate Seal and the Company have hereunto set their Corporate Seal duly attested to by the hands of the proper officers duly authorized in that behalf.

SIGNED SEALED AND DELIVERED
In the presence of:

THE CORPORATION OF THE
TOWN OF FORT ERIE

MAYOR

CLERK

(886369 ONTARIO LTD.)
SOFTCOM

JOE PALUMBO
PRESIDENT

Rick Witkowski
Vice President