

This Agreement made by and between Advantica, Inc., a Delaware corporation, with offices at 600 Bent Creek Blvd., Suite 100, Mechanicsburg, Pennsylvania 17050, United States of America ("Advantica") and the City of Long Beach, a municipal corporation, with offices at the Gas and Oil Department, 2400 E. Spring Street, Long Beach, CA 90806 ("Licensee").

#### ARTICLE 1 - DEFINITIONS

The following definitions of certain key terms used in this Agreement shall apply:

- 1.01. "Anniversary Date" means each annual recurrence of the Delivery Date.
- 1.02. "Category One" Software means software with an Application Programming Interface (API) provided for use only as explicitly provided for in this Agreement. "Category Two" Software means software provided in executable or object code form and maintained and supported by Advantica. "Category Three" Software means software provided without Advantica maintenance and support obligations.
- 1.03. "Computer System" means, collectively, the Computer System(s) specified in SCHEDULE A, subject to any additions to, substitutions for and deletions from such list as may hereafter, from time to time, be requested by Licensee and approved, in writing, by Advantica.
- 1.04. "Confidential Information" shall mean all material or data relating to Licensee's or Advantica's business that is designated by either Party as "Confidential". Confidential Information does not include information: (1) which is in or enters the public domain without breach of this Agreement; (2) which was previously known to the receiving Party as evidenced by the receiving Party's written records; (3) which is independently developed by the receiving Party as evidenced by the receiving Party's written records; or (4) lawfully disclosed to the receiving Party by a third Party.
- 1.05. "Delivery Date" means the date Licensee receives delivery of the Software and Documentation licensed to Licensee under this Agreement.
- 1.06. "Documentation" means the documentation provided by Advantica to Licensee in the form specified in SCHEDULE A for use in connection with the Software.
- 1.07. "Enhancement" means any change in the Software that improves the efficiency and effectiveness of the Software function(s) or adds one or more new functions within the application area functionality of the Software as described in the Documentation.
- 1.08. "Licensee's Business" means the internal business of Licensee specified in SCHEDULE A. In all cases, unless explicitly specified otherwise in SCHEDULE A, the term shall not include providing services or advice for fee or for free to any third party persons, firms or corporations. In addition to the foregoing, the term shall not include, and nothing in SCHEDULE A shall be interpreted to permit, developing software or in any way assisting any other entity or person in developing software that is substantially similar to the Software and regarded as interchangeable or substitutable by reason of its functionality or intended use.
- 1.09. "Object or Executable Code" means the machine-readable instructions for the Software.
- 1.10. "Proprietary Information" means the Software and Documentation, and all other software codes, trade secrets, confidential data, designs, concepts, discoveries, ideas, enhancements, improvements, specifications, methods, techniques, processes, plans, and inventions, and other business information whether patentable or not, provided such is conceived, developed and/or reduced to practice by Advantica. Proprietary Information does not include information: (1) which is in or enters the public domain without breach of this Agreement; (2) previously known to Licensee as evidenced by Licensee's written records; (3) independently developed by Licensee as evidenced by Licensee's written records; or (4) lawfully disclosed to Licensee by a third party.
- 1.11. SCHEDULE A means the initial schedule attached to and made part of this Agreement as SCHEDULE A, and each successively lettered schedule subsequently added hereto through mutual written agreement signed by the parties. In the event a successively lettered schedule is so added, all references to "SCHEDULE A" in this Agreement shall be read to apply equally to the successively lettered schedule.
- 1.12. "Software" means the proprietary computer software module(s) specified in SCHEDULE A in the form described in Schedule A, and shall be deemed to include any and all Updates and Enhancements licensed hereunder from time to time. As used herein, Software shall also include any of the following as may be specified to be licensed hereunder in SCHEDULE A: (1) Customized Software developed for Licensee, (2) Pre-Commercial Release Software (i.e., "Beta" Software as described in Section 2.04 (PRE-COMMERCIAL RELEASE SOFTWARE SUPPLEMENTAL PROVISIONS)), and (3) Evaluation Software (i.e., as described in Section 2.05 (EVALUATION SOFTWARE SUPPLEMENTAL PROVISIONS)).
- 1.13. "Updates" means program logic and documentation changes and improvements provided by Advantica to Licensee to correct known defects and maintain the operational quality of the Software.

## ARTICLE 2 - LICENSE PROVISIONS

2.01. **TERM AND RENEWAL.** The License Term of this Agreement will be as specified in SCHEDULE A. The License Term of this Agreement shall not automatically renew.

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2.11. TEMPORARY USE. Licensee is authorized to use the Software temporarily on a back-up Computer System approved by Advantica when any Computer System specified in SCHEDULE A is temporarily inoperable until operable status is restored.

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2.15. OBLIGATIONS UPON TERMINATION. Upon the expiration or other termination of the License Term of this Agreement, Licensee will return the Software and Documentation and all copies thereof to Advantica and will deliver a certification by a duly authorized officer of Licensee to Advantica within ten (10) days of such termination acknowledging that it no longer has any rights to use the Software and Documentation and that the

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2.16. LICENSE FEE(S). In consideration of the license granted hereunder, Licensee will pay directly or (with Advantica's prior written approval) indirectly through a third party approved by Advantica in writing the Fee(s) specified in SCHEDULE A. All payments to Advantica are expressed and will be remitted in U.S. Dollars. Payment of the Fee(s) specified in SCHEDULE A shall be made within thirty (30) days of Licensee's receipt of Advantica's invoice for the commencement of the respective License Term, and if renewed, in advance of any renewal thereof. Advantica reserves the right to add an interest charge of ten percent per year calculated on a daily basis to any amounts outstanding more than thirty (30) days after the date payment is due. There will be added to any charges under this Agreement amounts equal to any tariffs, duties or taxes, (including without limitation sales, use, value added, personal property, and other) imposed or levied based on Licensee's possession or use of the Software and Documentation by any government or governmental agency (foreign or domestic), and Licensee will promptly pay to Advantica an amount equal to any such tariffs, duties or taxes actually paid, or required to be collected or paid by Advantica.

### ARTICLE 3 - MAINTENANCE AND SUPPORT SERVICES

3.01. APPLICATION. Unless expressly provided in SCHEDULE A, or as provided in limited circumstances under Section [3.06], this ARTICLE 3 shall only apply to "Category Two" Software.

3.02 TERM AND RENEWAL. The Maintenance and Support Term of this Agreement will be as specified in SCHEDULE A. Upon expiration of the initial and each subsequent Maintenance and Support Term of this Agreement, the Maintenance and Support Term shall continuously renew for an identical term, provided that neither Licensee or Advantica has elected to terminate maintenance and support services as provided for in this provision and provided that Licensee is not in default under this Agreement. Either party may terminate maintenance and support services to be effective at the end of the then-current Maintenance and Support Term by providing the other party with written notice of its intent to terminate at least thirty (30) days prior to the end of the then-current Maintenance and Support Term. An election by Licensee to not renew the Maintenance and Support Term shall not affect the continuance of the License Term provided Licensee is not in default under this Agreement.

3.03. COORDINATION. Licensee shall identify one person as specified on SCHEDULE A to serve in the capacity of coordinator for the purpose of receiving, distributing and coordinating the use of the Software and Documentation at Licensee's Computer System(s). Licensee shall provide

Advantica prompt written notification of any change in the person designated as Licensee's coordinator.

3.04. SERVICES INCLUDED - GENERALLY. Advantica provides maintenance and support services for the current and, for a minimum period of twelve months beginning on the date of the commercial release of the current version, the immediately preceding version of each Category Two Software. During the Maintenance and Support Term of this Agreement, Advantica will provide the maintenance and support services, if any, as specified in SCHEDULE A, upon payment to Advantica of the associated fees therefore, and provided this Agreement is still in effect and Licensee is not in breach of this Agreement.

#### 3.04.1. SPECIFIC SOFTWARE MAINTENANCE SERVICES

ERROR CORRECTION. Advantica and Licensee will promptly notify each other of any error in the Software that causes it not to perform substantially in accordance with the Documentation. Licensee will provide Advantica with written examples of the error and any supporting materials providing details sufficient to diagnose or reproduce the error. Advantica will exercise all reasonable efforts to correct any errors of which Advantica becomes aware.

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#### 3.04.2 SPECIFIC SOFTWARE SUPPORT SERVICES

INSTALLATION AND USE TRAINING. Within sixty (60) days of the Delivery Date, Advantica will provide up to the number of days of instruction as specified in SCHEDULE A, if requested by

Licensee. Licensee will pay the reasonable travel, food and lodging expenses of Advantica's instructor(s).

**REGULARLY SCHEDULED TRAINING.** Advantica will permit attendance by the number of employees of Licensee per year specified in SCHEDULE A at Advantica's training course(s) offered for the Software without payment of any seminar fee or charge.

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#### ARTICLE 7 - LIABILITY AND DEFAULT

**7.01. INDEMNIFICATION BY ADVANTICA.** Advantica will indemnify and hold Licensee, its officers and employees harmless from any claims, demands, liabilities, actions, suits or proceedings filed by any third party that the Software and Documentation constitute an infringement of any United States copyright or United States patent, excluding any claims arising out of Licensee's unauthorized use or modification of the Software, provided that Licensee gives Advantica reasonable notice of all such claims, demands, liabilities, actions, suits or proceedings asserted and cooperates with Advantica in the defense thereof. Advantica shall have control of the defense of such lawsuit.

**7.02. INDEMNIFICATION BY LICENSEE.** Licensee will indemnify and hold Advantica, its officers and employees harmless from any claims, demands, liabilities, actions, suits or proceedings filed by any third party arising out of the correctness of data input to the Software by Licensee, Licensee's unauthorized, negligent or improper use of the Software and Licensee's interpretation or application of results obtained from the Software under this Agreement, and agrees to undertake the

cost of defending same, including reasonable attorney's fees. Licensee shall have control of the defense of such lawsuit.

**7.03. ATTORNEYS' FEES.** In the event Advantica or Licensee brings any proceeding or lawsuit in connection with this Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees.

**7.04. DEFAULT.** Without prejudice to any other rights of termination available to Advantica under Section 2.14 (TERMINATION), failure by either party to comply with any material term or condition under this Agreement will entitle the other party to give written notice of the default. If the defaulting party has not cured the default within sixty (60) days after receipt of the written notice, the non-defaulting party, in addition to any other rights it may have under this Agreement or otherwise under law, may terminate the License Term and the Maintenance and Support Term of this Agreement effective upon the defaulting party's receipt of a subsequent termination notice.

**7.05. LIMITATION OF LIABILITY.** Advantica shall not be liable to Licensee or its successors or any third party for any loss of profits, loss of business, interruption of business nor indirect, special or consequential damages of any kind arising from or in connection with the use of the Software and Documentation or the Proprietary Information supplied hereunder even if the remedy provided hereunder should fail of its essential purpose. Advantica's total liability for direct damages to Licensee under this Agreement (whether based on breach of contract, tort or otherwise) shall be limited to the amount of the initial term License Fee actually received by Advantica under this Agreement.

#### ARTICLE 8 - GENERAL PROVISIONS

**8.01. GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, United States of America. With respect to the governance of Advantica intellectual property, including but not limited to ownership, use, copyrights, and trade secrets, this Agreement shall be construed and enforced in accordance with the intellectual property laws of the Commonwealth of Pennsylvania. With respect to all other matters the laws of the State of California shall govern this Agreement. The parties hereby consent to the personal jurisdiction of the courts of these states and waive their rights to change venue.

**8.02. ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the parties with respect to the matters contained herein. This Agreement may not be modified or amended except in writing signed by authorized representatives of Advantica and Licensee. The parties agree that SCHEDULE A, but not the terms and conditions of this Agreement, may be modified through an exchange of sender-verifiable emails among authorized persons of the parties, with Advantica subsequently issuing to Licensee an updated SCHEDULE A reflecting the mutually agreed modifications. Any terms and conditions

contained on any acknowledgment, purchase order or other document submitted by Licensee to Advantica which are in conflict with or in addition to the terms of this Agreement will be void and of no effect.

8.03. RELATIONSHIP OF PARTIES. Nothing contained in this Agreement shall in any way be construed to create an agency relationship, partnership or joint venture between the parties, and each party shall have no power to obligate or bind the other in any manner whatsoever.

8.04. NOTICE. Any notice required or permitted to be sent under this Agreement will be delivered to the addresses of the parties specified in SCHEDULE A by hand or by overnight courier service, or by fax or email with confirmation copies sent by overnight courier, to the addresses of the parties specified in SCHEDULE A. Notice so sent will be deemed effective when received by the addressee.

8.05. NO WAIVER. A term or condition of this Agreement can be waived only by written consent of the appropriate party. Forbearance or indulgence by either party in any regard will not constitute a waiver of the term or condition to be performed and, until performance of the term or condition is complete, the other party may invoke any remedy available under the Agreement or by law, despite such forbearance or indulgence.

8.06. FORCE MAJEURE. Neither party will be responsible for delay or failure in performance resulting from causes beyond the control and without default or negligence of such party, excepting only payment obligations.

8.07. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

8.08. SEVERABILITY. If any of the provisions of this Agreement are declared to be invalid, such provisions will be severed from this Agreement and the other provisions hereof will remain in full force and effect.

8.09. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which will be regarded for all purposes as an original and such counterparts will constitute but one and the same instrument.

8.10. TITLE HEADINGS: GENDER. The title headings of the respective articles and sections of this Agreement are inserted for convenience and shall not be deemed to be a part of this

Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

8.11. SOVEREIGN IMMUNITY WAIVER. **The parties agree that this Agreement constitutes commercial activity and not a public act of State or sovereign government.** To the extent that any party to this Agreement has or may have in the future any claim of sovereign immunity or other similar immunity based upon such party being an agent or instrumentality of a sovereign State in connection with the Agreement or any dispute or controversy hereunder, such party hereby irrevocably waives all such immunity.

8.12. OFFICIAL TEXT. The official text of this Agreement and any SCHEDULE, amendment, attachment or other document related thereto in any way shall be in English. In the event of any dispute concerning the construction or meaning of this Agreement, reference shall be made only to this Agreement as written in English and not to any other translation into any other language, regardless of whether any such translation is signed by Advantica.

8.13. INJUNCTIVE RELIEF. Advantica and Licensee hereby acknowledge that damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in articles 6.01 (CONFIDENTIALITY) and 6.02 (CODE INTEGRITY). Accordingly, Advantica shall be entitled to temporary and permanent injunctive relief with respect to any such breach without the necessity of proving actual damages, including specific performance of such covenants, promises or agreements or an order enjoining Licensee from any threatened, or from the continuation of any actual, breach of such covenants, promises or agreements. The rights set forth in this Section shall be in addition to any other rights that Advantica may have at law or in equity. The parties hereby irrevocably agree that any proceeding with respect to enforcement of the rights provided in this Section may be brought in any court of competent jurisdiction.

8.14. DISCRIMINATION. Subject to applicable laws, rules and regulations, Advantica shall not discriminate against any person or group on the basis of age, gender, sexual orientation, HIV status, marital status, race, religion, creed, ancestry, national origin, disability, or handicap with respect to the performance of its obligations under this Agreement. In the performance of this Agreement, Advantica shall not discriminate against any employee or applicant for employment on the basis of race, color, sex, religion, ancestry or national origin.



IN WITNESS WHEREOF, and intended to be legally bound hereby, each of the parties hereto have caused this instrument to be executed in its name and behalf by its duly authorized officers, to be effective as of the date of signing by Advantica.

CITY OF LONG BEACH

ADVANTICA, INC.

**ASSISTANT**

BY: Christine J. Shyply  
(Authorized Signature)

BY: Thomas E Coolidge  
(Authorized Signature)

BY: Gerald R. Miller  
(Printed Name)

BY: THOMAS E COOLIDGE  
(Printed Name)

TITLE: City Manager

TITLE: EVP

DATE: August 4, 2006

DATE: 28 JUNE 2006

APPROVED AS TO FORM

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

9/3, 2006  
ROBERT E. SHANNON, City Attorney

By [Signature]  
DEPUTY CITY ATTORNEY

**SCHEDULE A**

**INFORMATION TO BE COMPLETED BY ADVANTICA**

**LICENSEE**

The City of Long Beach  
 Gas and Oil Department  
 2400 E. Spring Street  
 Long Beach, CA 90806

**LICENSEE'S BUSINESS**

: Municipal gas utility serving over 145,000 natural gas customers per year.

**SOFTWARE**

Number of Original Copies	Software	Software Category	Term (Yrs)	Automatic Renewal (Y or N)	License Fee	Effective Date	M&S Fee	Effective Date
One (1)	SynerGEE® Gas Steady State Module (SYNG)	Two	99	Y	\$21,750	Date of License Signing	\$3,480	Anniversary Date
One (1)	Model Builder (MBL)	Two	99	Y	\$12,800	Date of License Signing	\$2,048	Anniversary Date
One (1)	Code Compliance (CC) (Server License for up to 4 concurrent desktop users and up to 6 field users)	Two	99	Y	\$48,400	Date of License Signing	\$7,744	Anniversary Date

Recorded Form : Object Code  
 Distribution Media : CD  
 Simultaneous Use Maximum : One (1) Per Original Copy  
 Back-Up Copies Allowed : One (1) Per Original Copy  
 Documentation Form : Electronic

**COMPUTER SYSTEM(S)**

CPU Manufacturer : INTEL Pentium IV or higher  
 Operating System : Windows 2000 or XP

**MAINTENANCE AND SUPPORT SERVICES**

Error Correction : Yes  
 Updates : Yes

**SUPPORT SERVICES**

Installation and Use Training : No Days: N/A  
 Regularly Scheduled Training : Yes  
 Number of attendees permitted each year : Two (2)  
 Telephone Consultation : Yes  
 On-Site Assistance : Yes, as negotiated  
 Enhancements : Yes

**INFORMATION TO BE COMPLETED BY LICENSEE**

**ONLY FOR U.S. LICENSEES**

Licensee is tax exempt?

: Yes \_\_\_\_\_ No X

(If yes, please attach appropriate certificate)

**INSTALLATION SITE(S)**

Installation Site

: Licensee's Address

**NOTICES**

**Licensee**

The City of Long Beach  
Gas and Oil Department  
2400 E. Spring Street  
Long Beach, CA 90806

**Advantica**

Advantica, Inc.  
600 Bent Creek Blvd., Suite 100  
Mechanicsburg, PA 17050

**LICENSEE CONTACT INFORMATION**

**Coordinator**

Title  
Direct Phone  
Facsimile  
E-mail Address  
Address (if different)

: Mike Zukoski  
:  
: (562) 570-2038  
: (562) 570-2008  
: Mike\_Zukoski@longbeach.gov  
:  
:

**Information Technology**

Title  
Direct Phone  
Facsimile  
Address (if different)

: Same as Coordinator  
:  
:  
:  
:

**Billing**

Title  
Direct Phone  
Facsimile  
Invoice Copies  
Address (if different)

: Same as Coordinator  
:  
:  
:  
:  
:

This SCHEDULE is an attached SCHEDULE to the SOFTWARE LICENSE AGREEMENT between Licensee and Advantica, Inc.

ACCEPTED: <sup>DATE</sup> **TO SECTION 301 OF THE CITY CHARTER.**  
CITY OF LONG BEACH **ASSISTANT**

BY: Christine A. Shippey  
(Authorized Signature)

BY: Gerald R. Miller  
(Printed Name)

TITLE: City Manager

DATE: August 4, 2006

ACCEPTED:  
ADVANTICA, INC.

BY: Thomas E. Coolidge  
(Authorized Signature)

BY: THOMAS E COOLIDGE  
(Printed Name)

TITLE: EVP

DATE: 28 JUNE 2006

APPROVED AS TO FORM

8/3, 2006  
ROBERT E. SHANNON, City Attorney

By [Signature]  
DEPUTY CITY ATTORNEY