



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Power Supply Contract (Secondary Service) between the City of Lodi and Arkay Industries, Inc.

MEETING DATE: August 20, 1997

-SUBMITTED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council authorize the City Manager to approve the attached Economic Development Power Supply Contract (Contract) between the City of Lodi (City) and Arkay Industries, Inc. (Customer).

BACKGROUND: In return for the Customer's: 1) providing new employment and 2) improving the City's industrial area by constructing new manufacturing facilities, the City and the Customer are willing to sign a contract for delivery of secondary service (less than 12,000 volts). The Electric Utility Department will own, install, maintain and repair the secondary transformers and associated equipment and will absorb the cost of transformer losses in return for payment at the Contract-established electric rate.

A copy of the proposed contract is enclosed for reference.

FUNDING: Not Applicable

Alan N. Vallow
Electric Utility Director

Prepared by John Stone, Manager, Business Planning and Marketing

ANV/JS/lst

c: City Attorney

Approved

H. Dixon Flynn
City Manager

RATE AGREEMENT
BETWEEN
ARKAY INDUSTRIES, INC.
AND
THE CITY OF LODI

This Agreement is made by and between ARKAY INDUSTRIES, INC. ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory rate schedule assignment for this Customer.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, Customer is a manufacturer of plastic products which will be operating in the City; and

WHEREAS, Customer is constructing new manufacturing facilities; and

WHEREAS, Customer is bringing new employment to the City; and

WHEREAS, City desires to supply the Customer's total load at secondary voltage (less than 12,000 volts) and provide Customer with a contract rate; and

WHEREAS, City desires to provide the Customer an economic incentive in the form of a discounted electric rate in return for creating a new business with new electric load in the City.

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Arkay Industries, Inc.

- 1.4 "Facility" is the Customer's facility located at 1250 East Thurman Street, Lodi, California.
- 1.5 "Account" is the Customer's Account Number initially assigned to Customer's Facility or its successor Customer Account Number(s).
- 1.6 "Parties" are collectively Customer and City.
- 1.7 "kw" is a kilowatt, a demand charge billing unit.
- 1.8 "kWh" is a kilowatt-hour, an energy charge billing unit.
- 1.9 "Billing Cycle" is the monthly bill.
- 1.10 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.
- 1.11 "Energy Multiplier" is the sum of 1.000 plus the change in the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics for the previous calendar year. This Energy Multiplier will be in effect for the following calendar year for bills rendered on and after February of the applicable year. Succeeding yearly Energy Multipliers will be the product of the previous Energy Multiplier and the sum of 1.000 plus the change in the Consumer Price Index for the previous calendar year. In no case will the Energy Multiplier be less than 1.000.

Section 2. Rate Application

- 2.1 The Account shall be billed a minimum cumulative total of \$20,000 for the term of the Agreement.
- 2.2 The billing cycle charge for the Customer shall be as follows:

July 8, 1996 through December 31, 1999:

Customer Charge:	\$ 125.00
Demand Charge:	\$ 0.00 per kw
Energy Charge:	\$ 0.05200 per kWh less the Economic Development Credit
Economic Development Credit:	\$ 0.0002 per kWh per Full Time Equivalent (FTE) employee up to a maximum of \$ 0.01000 per kWh. Initial and subsequent FTE totals may be updated at six-month intervals. The Electric Utility Department may update the FTE total at more frequent intervals when in its sole judgment an update is appropriate.

January 1, 2000 through December 31, 2001:

Customer Charge:	\$ 125.00
Demand Charge:	\$ 0.00 per kw
Energy Charge:	(\$ 0.05200 per kWh less the Economic Development Credit) times the Energy Multiplier
Economic Development Credit:	\$ 0.0002 per kWh per Full Time Equivalent (FTE) employee up to a maximum of \$ 0.01000 per kWh. Initial and subsequent FTE totals may be updated at six-month intervals. The Electric Utility Department may update the FTE total at more frequent intervals when in its sole judgment an update is appropriate.

Energy Multiplier: as defined in Section 1.11 above

Section 3. Term of Agreement

- 3.1 This Agreement shall be binding for bills rendered on or after July 8, 1996, and shall remain in effect subject to Paragraphs 3.2 and 3.3 below, for bills rendered through December 31, 2001.

3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.

3.3 This Agreement cannot be terminated without mutual consent of the Parties.

3.4 Parties may mutually extend this Agreement from year to year beyond the original term of this Agreement.

Section 4. Force Majeure

4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.

The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.

4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. Assignments

5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments

6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability

7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law

8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. Counterparts

9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. Headings

10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. Notices

11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party

to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

11.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR

 CITY OF LODI

 1331 SOUTH HAM LANE

 LODI CA 95242-3995

To Customer: ARKAY INDUSTRIES, INC.

 1250 EAST THURMAN STREET

 LODI CA 95240

Section 12. Non-waiver

12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. Warranty of Authority

13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this

Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

Section 14. Metering

14.1 Metering for billing purposes will be at the low voltage side of the transformer supplying power to Customer's Facility.

Section 15. Entire Agreement

15.1 This document contains the entire agreement between the Parties and as to the matters addressed by this document. It shall supercede any previous written agreements between these parties. Any inconsitent prior or contemporaneous oral agreement or understandings are void and shall not be used to modify this written Agreement.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI, a Municipal Corporation

H. Dixon Flynn, City Manager

Date

ATTEST:

Alice M. Reimche, City Clerk

Date

APPROVED AS TO FORM:

Randall A. Hays

Randall A. Hays, City Attorney

8-27-97

Date

ARKAY INDUSTRIES, INC.

Name

Date