

**AMENDMENT NUMBER ONE TO  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
MITSUBISHI ELECTRIC POWER PRODUCTS, INC. D/B/A  
COMPUTER PROTECTION TECHNOLOGY**

This Amendment Number One ("Amendment") is dated June 4, 2024, ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City") and MITSUBISHI ELECTRIC POWER PRODUCTS, INC. D/B/A COMPUTER PROTECTION TECHNOLOGY, a Delaware corporation ("Consultant").

WHEREAS, City and Consultant entered into an agreement on 18<sup>th</sup> day of January, 2023 for Consultant to independent contractor to provide preventative maintenance services for critical power protection equipment (the "Agreement"); and

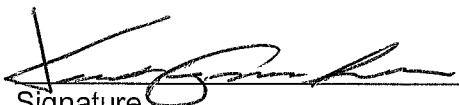
WHEREAS, City and Consultant desire to amend the scope of the agreement to include additional services; and

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 1.1 of the Agreement entitled "Scope of Services" shall be amended to include additional services as described in amended Consultant's Program Proposal, attached hereto as Exhibit "A," and incorporated herein.
2. All terms not defined herein shall have the same meaning and use as set forth in the Agreement, as amended.
3. All other terms, conditions, and provisions of the Agreement, as amended, shall remain in full force and effect.
4. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment to be executed by and through their respective authorized officers, as of the date first above written.


**CONSULTANT**

  
Signature

Date: 7-12-2024

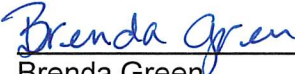
Michael Crossland Regional Sales Contract Mgr.  
Name and Title

CITY OF COSTA MESA

  
\_\_\_\_\_  
Carol Molina  
Finance Director

Date: July 18, 2024

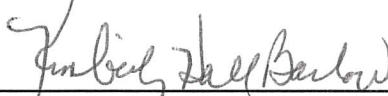
ATTEST:

  
\_\_\_\_\_  
Brenda Green  
City Clerk



Date: 8/19/2024

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

Date: 7/24/24

APPROVED AS TO INSURANCE:

  
\_\_\_\_\_  
Ruth Wang  
Risk Management

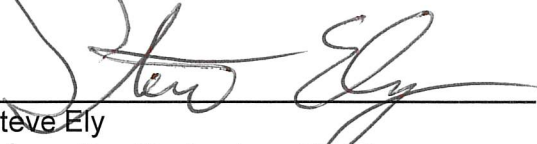
Date: 7/18/24

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Michael Steinke  
Project Manager

Date: 7/18/2024

DEPARTMENTAL APPROVAL:

  
\_\_\_\_\_  
Steve Ely  
Information Technology Director

Date: 07/23/2024

**EXHIBIT A**

CONSULTANT'S PROGRAM PROPOSAL (SUPPLEMENTED IN 2024)



A Service Branch of



## PMA Contract

May 28, 2024

PMA Contract No. M24-0528-COCM

**Customer: City of Costa Mesa**

Prepared/Approved by: Vincent Guerra Luna, Regional Sales Contract Manager



A Service Branch of



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Subject to the terms and conditions set forth in this PMA Contract, Mitsubishi Electric Power Products, Inc. is pleased to provide this contract for preventative maintenance for your critical power protection equipment. Prices quoted are for a one-year service period, with the following program option:

The **Preventative Maintenance Only Program** includes labor to conduct inspections. In all cases additional non-scheduled labor and emergency calls are billed separately at listed contract labor rates, with parts and materials also billed separately.

CPT appreciates this opportunity to provide Customer **City of Costa Mesa** the high level of expertise required for the maintenance of your critical support systems.

Sincerely,

**Computer Protection Technology**

A Service Branch of Mitsubishi Electric Power Products, Inc.

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Vincent Guerra Luna  
Regional Sales Contract Manager



A Service Branch of



## PMA CONTRACT No. M24-0528-COCM

This PMA Contract is made and entered between **MITSUBISHI ELECTRIC POWER PRODUCTS, INC.**, a Delaware corporation, with an address of 1215 Pacific Oaks Place, Ste. 106, Escondido, CA 92029 ("**Service Provider**") and **City of Costa Mesa** with a principal address of **PO Box 1200, Costa Mesa, CA 92628-1200** ("**Customer**"), who agrees as follows:

**1. PURPOSE OF AGREEMENT.** Service Provider hereby agrees to provide maintenance service on the equipment owned or operated by Customer as described below (the "**Equipment**") and located at the Customer's data center at **77 Fair Dr., Costa Mesa, CA 92626** (the "**Covered Location**") in accordance with the terms and price of the program described below and selected by Customer for this PMA Contract. This PMA Contract is effective from the earlier of the Start Date specified herein or the date on which it is accepted by Service Provider and shall remain in force until the End Date specified herein.

### Preventative Maintenance Only (PMO) Program

#### Equipment Covered

Equipment	UPS Model No.	Serial No.	Annual Price
(1) 30kVA Poweware UPS & Batteries	9355-30	EA375XX05	\$1,439.00
(1) 15kVA Eaton UPS & Batteries	9170+	EB383T0029	\$1,439.00
(1) 10kVA Eaton UPS & Batteries	9155-10	FA383FBB10	\$1,439.00
(1) 20kVA Eaton UPS & Batteries	9PXM Series	BF12P13418	\$1,699.00
<b>Total</b>			<b>\$6,016.00</b>
<b>3 Year Term Option: Discounted Annual Price (billed annually)</b>			<b>\$5,715.00</b>

- **Two (2) PM Visits per Year –OFF HOURS**
- **PMO Program:** Remedial & emergency parts and onsite labor not included
- **Effective Dates: July 28, 2024 End Date July 27, 2025 (1 Year) or Start Date July 28, 2024 End Date July 27, 2027 (3 Years- Billed Annually )**

This PMO program option includes two (2) PM visits per year with a 4-hour guaranteed on-site emergency response and 24x7 coverage. Remedial service, parts, labor, emergency calls, batteries, capacitors (CAPs) and all other consumables are invoiced separately from the agreement. PMO programs prioritize the customer for emergency response and entitle the customer to annual and/or bi-annual routine preventative maintenance visits.

**NOTE:** The customer will have unlimited access to Service Provider's 'Client Web Portal' WorkForce Mobilizer

- Go to [www.cptups.com](http://www.cptups.com) → Click on 'Customer Login' → enter your username and password, which will be provided by CPT.
- The customer will be able to access all of their **Service Reports, Quotes, Proposals, active & expired contracts, renewals, miscellaneous documents, and scheduled services**, all at their convenience.

**2. SCHEDULED PREVENTATIVE MAINTENANCE.** The Service Provider agrees that:

A. Preventative maintenance will include inspection, testing, cleaning, adjusting, lubricating, and other services necessary or desirable to reduce or eliminate all premature Equipment failure or downtime.

1. All Power Systems:

At least every **one hundred eighty days**, we will:

- a. Tighten all electrical connections
- b. Inspect all PCB boards for cracks or damage
- c. Check and record input/output voltage and amperage readings
- d. Calibrate metering
- e. Perform safety shutdown function tests



- f. Exercise all circuit breakers
- g. Inspect all AC & DC capacitors for leakage or swelling
- h. Perform system ride through or outage test (at customers request only)
- i. Provide customer with a maintenance report with the date of inspection.
- j. Perform all preventative maintenance according to the procedures and at the frequencies recommended by the manufacturer of the Equipment.

2. All Sealed Battery Systems:

At least every **one hundred eighty days**, we will:

- a. Re-torque all battery terminal connections per manufactures specifications
- b. Check and record each individual battery voltage
- c. Check and record each battery condition (e.g., Good, Borderline, or Replace)
- d. Check and record battery cold cranking amps (CCA) or impedance
- e. Inspect battery casing for swelling or cracks
- f. Inspect battery terminal post for leakage or damage
- g. Provide customer with a maintenance report with the date of inspection.

3. If necessary, at least **every three hundred sixty (360) days**, we will:

- a. Inspect, clean and tighten all electrical connections in all immediate electrical panels, including system ground.

**3. PREVENTATIVE MAINTENANCE ANNUAL CHARGE.** Customer shall pay in advance the annual charges for the program selected by Customer, including applicable sales/use taxes, duties, tariffs or other similar charges. Such annual charge shall be payable within thirty (30) days after receipt of invoice. Such charge is all inclusive of, among other things, transportation, travel, tools, materials, accessories and labor to perform the program selected. Service Provider shall provide Customer with thirty (30) days' notice of any increase in the annual service charges for renewal of this PMA Contract. Any past due amount shall be subject to interest at the lower of 1.5% per month or the highest rate permitted by law, and Customer shall be responsible for all costs and expenses incurred by Service Provider, including attorneys' fees and costs, in collecting past due invoices or other payments.

**4. UNSCHEDULED REMEDIAL MAINTENANCE.** Service Provider further agrees to provide unscheduled remedial or emergency maintenance service, on call for the Customer, from time to time. Service Provider agrees to respond (within the Los Angeles, Orange, San Bernardino, Riverside and San Diego Counties) and be on site to a remedial or emergency call within four (4) hours after such call. The Customer shall pay Service Provider for such remedial or emergency service (in addition to the annual charge provided for in paragraph 3), at the following rates (unless covered by a FSA Program):

- A. Monday through Friday (8:00 a.m. - 5:00 p.m.) at the rate based on Itemized Statement of Charges below based upon eight (8) consecutive hours, including travel time. Minimum charge is for four (4) hours; replacement parts will be billed separately.
  - \$155.00 /Hr
- B. Saturdays, Sundays and during the hours from 5:00 p.m. - 8:00 a.m., at the rate based on the Itemized Statement of Charges below based upon eight (8) consecutive hours, including travel time. Minimum charge is for four (4) hours; replacement parts will be billed separately.
  - \$190.00/Hr
- C. Holidays
  - \$220.00/Hr

**5. DELIVERY OF PARTS.** For domestic and direct shipments of Parts outside of the U.S., Service Provider will ship FCA Incoterms 2020. For routed shipments of Parts outside of the U.S., Service Provider will ship ExWorks Incoterms 2020.

**6. CANCELLATION.** In the event that the customer wishes to cancel a scheduled PM, cancellation must be done at least 48 hours prior to the scheduled visit. The customer shall pay a 4-hour minimum charge if the PM is not canceled



at least 24 hours prior to the scheduled visit. Failure to furnish such notice to Service Provider may subject Customer to an additional fee of \$500.00, which shall require a change order reflecting such amount issued to Service Provider for time and material work.

**7. FORCE MAJEURE.** Neither party shall be liable to the other party if the performance of any of its obligations under this PMA Contract, other than the payment of money, is prevented or delayed due to a Force Majeure Event (as defined). "**Force Majeure Event**" means any event or cause beyond the delayed party's reasonable control (excluding payment obligations), provided that such event or cause was not the result of, in whole or in part, the negligence, acts, omissions or willful misconduct, of the delayed party, its subcontractors or their employees or agents. Force Majeure Events include, but are not limited to, fire, flood, national strike or other labor issue, act of god, act of governmental authority, terrorism, act of the other party, riot, embargo, weather, epidemic, public health crisis, government regulations, supplier or venue-related delays, flight delays or transportation problems, fuel or energy shortage or regional and geographical complications. For the avoidance of doubt, the foregoing list is intended to be illustrative and not exhaustive. In the event performance under this PMA Contract, or a party reasonably anticipates that performance will be delayed, due to a Force Majeure Event, the delayed party shall (A) give timely written notice of the occurrence of the Force Majeure Event to the other party, which notice shall include a description of the Force Majeure Event and the effect on the delayed party's performance, (B) use its commercially reasonable efforts to overcome and mitigate the cause of the Force Majeure Event, (C) continue performance of all of its obligations that are not affected by the Force Majeure Event, (D) update the other party as to the status of the delay and the delayed party's mitigation efforts at regular intervals as agreed by the parties and (E) upon cessation of the Force Majeure Event, promptly perform or complete its performance of the obligations which were prevented or delayed. The delivery schedule or time for performance under this PMA Contract shall be extended by a period of time reasonably necessary to overcome the effect of such delay and, unless the Force Majeure Event was caused by the act or omission of the other party, the delayed party shall not be entitled to any increase in price or fees. Notwithstanding the foregoing, neither party shall be obligated to perform its obligations under this PMA Contract if the Force Majeure Event renders continued performance excessively onerous, costly or burdensome due to the occurrence of a Force Majeure Event.

**8. CUSTOMER RESPONSIBILITIES.**

- i. Customer shall provide to Service Provider full and free access to the Equipment at the Covered Location and suitable working facilities, space for storage, adequate heat, ventilation and electric power and outlets for providing service at no cost to Service Provider. Service Provider will coordinate service activities with the Customer's representative to minimize any conflict of schedules or disruptions of regular Customer activities.
- ii. Customer shall maintain temperature and humidity of area where Equipment is located consistent with the requirements set forth in the user manual for such Equipment
- iii. Customer shall keep the Equipment clean and free of loose dirt and debris and shall keep the area free of corrosive atmospheres, including condensation, that would affect the life of the Equipment.

**9. LIMITED WARRANTY.** Service Provider warrants that the services provided under this PMA Contract shall be performed in a competent manner. Service Provider further warrants that any parts furnished by Service Provider in connection with this PMA Contract shall be provided with clear title and shall be free from defects in material and workmanship at the time of installation. Service Provider's sole and exclusive liability, and Customer's sole and exclusive remedy, under these warranties shall be that Service Provider, at its sole option, shall adjust or repair, as soon as practicable, equipment which is not operating under normal use and service in accordance with factory specifications because of a manufacturing defect in materials or workmanship, for the longer of the remaining term of this PMA Contract or ninety (90) days from the date of service.

The foregoing paragraph sets forth the exclusive remedy of Customer and the sole liability of Service Provider for any and all claims based on Service Provider's performance of services under this PMA Contract or for the failure of or defect in materials or services furnished under this PMA Contract, whether based on contract, warranty, tort (including negligence), strict liability or otherwise and is in lieu of all other warranties whether written, oral, implied, or statutory. Equipment not under Service Provider's original equipment warranty or a PMA Contract immediately prior to the effective date of this PMA Contract, is subject to inspection by Service Provider to determine if it is in acceptable working condition and includes current Service Provider mandatory field modifications. Such inspection and any repairs or modifications deemed necessary by Service Provider to bring the Equipment up to good operating condition shall be made at Customer's expense under separate agreement at Service Provider's then current time and material charges.





EXCEPT AS EXPRESSLY STATED IN THIS PMA CONTRACT, SERVICE PROVIDER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PARTS OR SERVICES PROVIDED PURSUANT TO THIS PMA CONTRACT. ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY DISCLAIMED.

**10. EXCLUSIONS FROM COVERAGE.** Service labor and parts shall be invoiced as an additional charge to Customer at a 20% discount off Service Provider's then current labor and material list prices, if any, if the following conditions occur:

- i. Customer attempts to maintain or repair Equipment in a manner other than, or in conflict with, this PMA Contract or Service Provider's specific recommendation.
- ii. Damage to Equipment is caused by: modification, alteration, repair or service of the Equipment by anyone other than an authorized Service Provider service provider; physical abuse to, or misuse of, the Equipment; operation in a manner contrary to the instructions which accompany the Equipment; use of the Equipment in conjunction with equipment supplied by a third party; or any damage caused by acts of God such as lightning or fluctuation in electrical power.
- iii. Damage to Equipment results from failure to maintain facilities and Equipment in a reasonable manner consistent with Section 8 above (Customer Responsibilities).
- iv. Parts and Labor required to maintain the equipment that is not included in the program selected by the customer.
- v. The Service Provider Service personnel is denied ready and reasonable access to Covered Location or the Equipment.
- vi. It is necessary, due to local circumstances, to use union labor or hire an outside contractor. Service Provider service personnel will provide supervision only and Customer shall be responsible for the cost of such union or contracted labor controlling humidity so that there is no condensation.
- vii. The cost of parts and labor to replace batteries.
- viii. The Equipment is moved from the Covered Location. Charges to provide service at such other site shall be subject to mutual agreement between Customer and Service Provider.
- ix. Cost of completing a service call that is delayed or interrupted by Customer.

**11. TERM AND TERMINATION.** This PMA Contract shall be in effect during the period indicated above. Thereafter, this PMA Contract may be renewed for successive one year terms unless terminated by either party giving the other party notice of termination no less than thirty (30) days prior to the expiration of the initial or any renewal term of this PMA Contract. Upon thirty day's written notice to Service Provider, Customer may terminate the PMA Contract prior to expiration of the contract period subject to the following conditions: (i) termination is not effective until expiration of the thirty day period; (ii) to the extent Customer paid in advance, Service Provider will refund the prorated amount for the remaining months in the contract period, following the termination date less an amount equal to ten percent (10%) of such prorated amount. In addition to all other rights and remedies provided to Service Provider at law or under this PMA Contract, this PMA Contract shall terminate immediately without further notice to Customer, if Customer is in default of any of its obligations under this PMA Contract, and such default continues for twenty (20) days after receipt of notice thereof.

**12. INSURANCE REQUIREMENTS.** Service Provider shall, at its sole expense, procure or maintain, and shall cause its subcontractors to procure or maintain, throughout the term of the PMA Contract the following types of insurance, which insurance shall be placed with insurance companies rated, at a minimum, "A-VIII" by Best's Key Rating Guide, with the following limits:

\* Workers' compensation insurance in statutory limits in accordance with all jurisdictions where Customer has operations including where the Work is to be performed.

\* Employer's liability in an amount of \$1,000,000 per person.

Business automobile insurance covering all owned, non-owned and hired autos in an amount of \$1,000,000 per occurrence.

\* Commercial general liability insurance covering claims of bodily injury and property damage in an amount of \$1,000,000 per occurrence, \$2,000,000 aggregate.

\* Umbrella Liability Insurance with a limit of \$4,000,000 per occurrence, \$4,000,000 aggregate.



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Service Provider will include Customer as an Additional Insured (with the exception of Worker's Compensation and Employers' Liability) per ISO Forms CG2010 04/13 and CG2037 04/13. Service Provider will notify Customer in writing at least 30 days prior to cancellation or material change in coverage. Upon written consent of Service Provider, Service Provider will provide a waiver of subrogation in favor of Customer on Service Provider's workers' compensation, auto and commercial general liability insurance policies per ISO Forms CG 2453 12/19 and CA 0444 03/10.

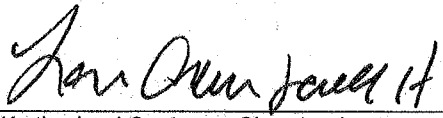

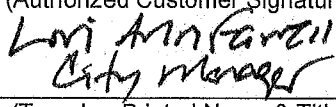

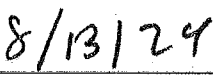
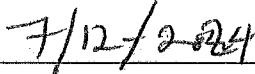
**13. LIMITATION OF LIABILITY AND EXCLUSIVITY OF REMEDIES - NEITHER SERVICE PROVIDER NOR ANY OF ITS CONTRACTORS AND SUPPLIERS OF ANY TIER SHALL BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF USE OF EQUIPMENT OR POWER SYSTEM, COST OF CAPITAL, COST OF PURCHASED OR REPLACEMENT POWER OR TEMPORARY EQUIPMENT (INCLUDING ADDITIONAL EXPENSES INCURRED IN USING EXISTING FACILITIES), CLAIMS OF CUSTOMERS OF CUSTOMER, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER. THE REMEDIES OF CUSTOMER SET FORTH IN THESE T&C ARE EXCLUSIVE. EXCEPT FOR DAMAGE CAUSED BY THE GROSS NEGLIGENCE OF SERVICE PROVIDER, THE TOTAL CUMULATIVE LIABILITY OF SERVICE PROVIDER WITH RESPECT TO ANY ORDER OR ANYTHING DONE IN CONNECTION THEREWITH SUCH AS THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, OR USE OF ANY PRODUCT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE SHALL IN NO EVENT EXCEED THE VALUE OF THE ANNUAL SERVICE CHARGE UPON WHICH SUCH LIABILITY IS BASED.**

**14. ASSIGNMENT.** This PMA Contract is not assignable by Customer without the prior written consent of Service Provider. Any attempt by Customer to assign any of its rights, duties or obligations under this PMA Contract without such consent is void. Customer acknowledges and agrees that subcontractors or authorized service providers selected by Service Provider may perform the services described in this PMA Contract.

**15. NOTICES.** All notices and other communications required or permitted under this PMA Contract shall be in writing, sent by electronic mail and certified or registered mail, return receipt requested, postage prepaid, to the parties at the email address specified for the applicable party and the address first listed in this agreement.

**16. GOVERNING LAW, ENTIRETY OF AGREEMENT AND PARTIAL INVALIDITY.** The laws of the State of California shall govern this Contract. It constitutes the entire agreement between the parties regarding the subject matter. All prior and contemporaneous agreements, representations, statements, negotiations, understandings and undertakings are superseded. No modifications or changes to this PMA Contract shall be effective unless in writing signed by authorized representatives of both parties. If any provision of this PMA Contract is held in any court to be invalid, void or unenforceable, the remaining provisions shall nonetheless continue in full force.

IN WITNESS WHEREOF, the parties have executed this PMA Contract of the dates set forth below to be executed as of the day and year first written above.

ACCEPTANCE	
An authorized signature below on this page indicates your acceptance of this PMA Contract.	
City of Costa Mesa	Mitsubishi Electric Power Products, Inc.
 _____ (Authorized Customer Signature)	 _____ (Authorized Service Provider Signature)
 _____ (Typed or Printed Name & Title)	 _____ (Typed or Printed Name & Title)
 _____ (Date Signed)	 _____ (Date Signed)

**PLEASE CHOOSE FROM THE FOLLOWING OPTIONS:**

1 Year Term

3 Year Term Option