



DATE: July 2, 2008

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office/ Information Technologies Division

SUBJECT: **APPROVAL OF FOUR-YEAR RENTAL AND MAINTENANCE AGREEMENTS IN THE AMOUNT OF \$57,960 FOR A KIP COPIER/PRINTER/SCAN SYSTEM FOR THE DEVELOPMENT SERVICES DEPARTMENT**

**SYNOPSIS**

Staff recommends that the City Council approve the four-year rental and maintenance agreements in the combined total of \$57,960 with KIP America for a KIP 7200 copier/printer/scan system for the Development Services Department/Engineering Division; and authorize the City Manager to execute the agreements.

**BACKGROUND**

Currently, the Development Services Department utilizes a Xerox copier/printer/scan system to facilitate the printing of engineering drawings from Auto CAD and/or GIS maps in addition to printing and copying building and project plans for the Engineering, Planning, and Building Divisions, and customers. The existing Xerox machine is also used to scan copies of final as-built plans and drawings for record retention. The existing Xerox machine does not have the capability of scanning a drawing, map or project plans and saving the image in several necessary formats. The existing rented Xerox machine also does not have the capability of scanning documents in color, nor printing documents on vellum or mylar.

**ANALYSIS**

The \$57,960 rental cost is inclusive of the \$1,017.50 per month, four-year rental for the KIP 7200 copier/printer/scan system, and the \$190 per month maintenance for the machine.

Document reproduction fees will assist with cost recovery for the KIP system. The Engineering Division has annually collected \$34K, \$40K, \$38K, \$32K and \$14K for FY 2003-2004 through FY 2007-2008, respectively. Staff anticipates that most of the rental cost will be recovered by reproduction fees.

The decision to rent the KIP machine was based on a cost comparison of comparable Xerox machines and demonstrations of each machine's capabilities. Development Services Department management decided that the KIP 7200 machine best served the needs of the department.

KIP America manufactures the industry standard for copy and printing systems used by architects and engineers.

The KIP 7200 machine that was selected by the Development Services Department is a mid-range office-production-size model. Only the basic machine features and functions were selected, to stay within a reasonable cost budget. The footprint size of the machine was also a major factor in the selection process. The area where the machine will reside is very compact, and meets the basic specifications for required machine operating space.

A nonappropriation rider will be executed with the rental agreement in case an economic downturn requires the return of the machine. If the nonappropriation rider is not applicable as the reason for the return of the machine, the City is obligated to pay the prorated outstanding balance of the rental and maintenance agreements.

The reason the rental agreement must be approved by the City Council is that the existing copier and printer purchase orders are designated for Xerox Corporation.

### **FISCAL IMPACT**

The cost of the KIP 7200 rental and maintenance agreements will be paid from the FY 2007-2008, and 2008-10 City Wide Copier and Printer account 194274.5342. The cost of the KIP machine will be appropriately budgeted through FY 2012 to accommodate the four-year agreements.

The balance of the existing rental agreement for the Xerox machine, in the amount of \$4,200, will be cancelled and the Xerox machine will be returned to Xerox. The Engineering division will pay the outstanding balance for the Xerox machine from projected FY 2007-08 carry forward from 101.414705.5241.

### **COMMISSION OR COMMITTEE REPORT**

Does not apply.

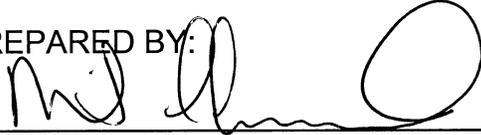
### **CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

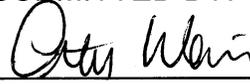
Staff recommends that the City Council approve the four-year rental and maintenance agreements in the combined total of \$57,960 with KIP America for a KIP 7200 copier/printer/scan system for the Development Services Department/Engineering Division; and authorize the City Manager to execute the agreements.

PREPARED BY:



Michael Sherwood  
Chief Information Officer  
Information Technologies Division

SUBMITTED BY:



Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Scott Smith, City Engineer

Teri Ferro, Financial Services Director





**RENTAL AGREEMENT**  
 39575 West 13 Mile Road, Novi, MI 48377  
 800-252-6793 Fax: 248-474-6081

Rental #: 555043 Customer #: CIT028

**RENTER INFORMATION**

Business Type: <b>Local Government</b>	Contact Name: <b>Debra Briski</b>
Company Name: <b>City of Oceanside</b>	Title: <b>Project Manager</b>
DBA Name (if any):	Phone: <b>760-435-3594</b>
Address: <b>300 N Coast Highway</b>	Fax:
City, State, Zip, County: <b>Oceanside, CA 92054</b>	Equipment Location Street Address: <b>300 N Coast Highway, Oceanside, CA 92054</b>

**EQUIPMENT DESCRIPTION**

Quantity:	Description:	Make/Model:	Serial Number:
1	<b>SYS7200COL – KIP 7200 Copier + Printer + Color Scan to File System</b>	<b>MACH7000</b> <b>MACH2100</b>	
1	<b>KIP Powerscript 3: Postscript &amp; PDF Format Option</b>	<b>DIGPDF-7000IPS</b>	<b>NONE</b>

**RENTAL TERM AND PAYMENTS**

Rental Term Months	Number of Payments	Amount of Payment*	*plus applicable taxes	
<b>48</b>	<b>48</b>	<b>at</b>	<b>\$1,017.50</b>	Advance Payment(s): <b>\$0.00</b>
				Upfront Documentation Fee: <b>\$0.00</b>
				Total Initial Payment: <b>\$0.00</b>

**ADDITIONAL PROVISIONS**

**END OF RENTAL PURCHASE OPTION**

- Service/Maintenance Agreement must accompany this Rental Agreement.
- All equipment covered under this Rental agreement is "New" equipment that will be supplied by KIP America.
- End of Rental Fair Market Value Purchase option will be based on Rented Equipment only.
- Annual Service/Maintenance Agreement, as attached, will be invoiced to the City of Oceanside in conjunction with this rental agreement & is not included in the monthly payment noted above.

The RENTER shall have the option to purchase all of the Equipment for the following Purchase Option Price. Rental check one:

\$1.00 Buyout		10% of Acquisition Cost	
Fair Market Value	<b>X</b>	Other:	

*Additional Terms and Conditions (continued on page 2)*

RENTOR: <b>KIP America, Inc.</b>	RENTER: <b>City of Oceanside</b>
By: <u>JOSEPH E. MORIN</u> <i>J.E.M.</i>	Signature: _____
Title: <u>REGIONAL SALES MANAGER</u>	Name (Print): _____
Date Accepted: _____	Title: _____ Date: _____

**UNCONDITIONAL GUARANTY**

In consideration of the Renter entering into the Rental set forth above, the undersigned (jointly and severally if more than one guarantor guarantees the Rental) ("Guarantor") unconditionally and absolutely guarantees to Renter, its successors and assigns, prompt payment and performance of all obligations of the Renter under the Rental (the "Obligations"). The undersigned agrees: (a) that the undersigned has read and understands all of the terms and conditions of the Rental; (b) that this Guaranty is of payment and not of collection and shall not be affected by any unenforceability or invalidity of the Obligations or any amendment, extension, waiver, or Rentals thereof and that Renter may proceed directly against the undersigned without taking any action with respect to the Renter, the equipment or any security for Renters obligations; (c) to waive all notices, including demand; (d) that this Guaranty shall be governed by the laws of the State of Michigan and Guarantor consents to the jurisdiction of, and venue in, any court located with the State of Michigan; and (e) to pay all Renter's cost of enforcement and collection of Obligation or this guaranty, including reasonable attorney fees. Guarantor authorizes Renter to obtain credit bureau reports and other bank and trade references with respect to Guarantor.

Signature:	<b>APPROVED AS TO FORM</b>	Signature:
Name: <b>NOT REQUIRED</b>	<b>OCEANSIDE CITY ATTORNEY</b>	Name:
Home Address:		Home Address:

*John P. ...*

1. RENTAL, RENTOR agrees to RENT to RENTER and RENTER agrees to RENT from RENTOR the Equipment described on page 1 and in any addendum to this RENTAL. RENTER agrees to pay RENTOR a documentation fee to cover RENTAL documentation and investigative costs. The RENTAL will commence on the Acceptance Date (defined below) unless otherwise indicated in the Delivery and Acceptance Certificate.
2. DELIVERY AND ACCEPTANCE OF EQUIPMENT. Upon delivery of the Equipment to the location identified on page 1, RENTER will inspect the Equipment and the Equipment will be deemed irrevocably accepted by RENTER upon the earlier of a) five (5) days after delivery of the Equipment; or b) the date of the signed Delivery and Acceptance Certificate ("Acceptance Date"). THIS RENTAL IS NON-CANCELLABLE FOR THE FULL RENTAL TERM.
3. RENTAL PAYMENTS. RENTER agrees to pay RENTOR the monthly RENTAL Payments for the RENTAL Term, in advance, on the date set forth in Renter's monthly invoice for such RENTAL Payment, commencing on the Acceptance Date. Any Advance Payments will be used for the first RENTAL Payment and any balance will be used for the last RENTAL Payment(s). RENTAL Payments shall be adjusted on a pro rata basis if the actual Acquisition Cost of the Equipment is different from the Acquisition Cost assumed by the RENTOR at the time that the RENTAL Payments were calculated. "Acquisition Cost" means the amount paid by RENTOR for the Equipment, including purchase, delivery and installation costs, up-front taxes and any trade-up or buyout amounts. If any part of a payment is more than five (5) days late, RENTER shall pay a late payment interest of 1.5% per month.
4. DISCLAIMER OF WARRANTIES. RENTOR is leasing the Equipment to RENTER "AS IS". RENTER HAS SELECTED THE EQUIPMENT AND SUPPLIER BASED ON ITS OWN JUDGMENT. FOR SO LONG AS RENTER IS NOT IN DEFAULT UNDER THIS RENTAL, RENTOR TRANSFERS TO RENTER ANY WARRANTIES BY THE MANUFACTURER OR SUPPLIER REGARDING THE EQUIPMENT.
5. LOCATION AND USE OF EQUIPMENT. RENTER agrees not to change the location of the Equipment without the prior written consent of RENTOR. RENTER will keep and use the Equipment in compliance with manufacturer's requirements for business purposes only and in good condition and repair. RENTER shall not make any alterations, additions or replacements to it without RENTOR'S prior written consent. At the end of the RENTAL Term (or any renewal term), or if the RENTAL is terminated for any reason, RENTER, at its expense, will return the Equipment to any place designated by RENTOR, freight prepaid, in the same condition it was delivered except for ordinary wear and tear. RENTER, at its own expense, will maintain the insurance set forth in Section 8 until the Equipment is so returned. RENTOR may charge RENTER an inspection service fee for assessing the condition of returned Equipment.
6. TAXES AND FEES. RENTER agrees to pay when due and indemnify RENTOR from and against all taxes, fees and charges relating to this RENTAL or the Equipment during the RENTAL Term or relating to RENTOR'S acquisition, repossession or disposition of the Equipment. RENTOR will file all personal property, use or other tax returns (unless RENTOR notifies RENTER otherwise) and RENTER agrees to pay RENTOR a fee for making such filings. RENTOR does not have to contest any taxes, fines or penalties. RENTER will pay personal property taxes periodically as invoiced by RENTOR.
7. INSURANCE; RISK OF LOSS. RENTER, at its own expense, shall keep insurance against all risks of loss, theft, damage or destruction of the Equipment for the full replacement value thereof and naming RENTOR as "Loss Payee". If RENTER fails to provide RENTOR evidence of insurance, then RENTOR may at its option obtain insurance covering RENTOR'S interest in the Equipment from an insurer of RENTOR'S choice (which may be an affiliate). If RENTOR is not required to procure or maintain any insurance, and that RENTOR will not be liable to RENTER if such insurance coverage is discontinued. RENTER agrees to pay to RENTOR the RENTOR'S costs for such insurance and a fee for RENTOR'S administration of such insurance. RENTER shall bear all risks of loss, theft, damages or destruction of the Equipment ("Loss") from any cause whatsoever and any such Loss shall not relieve RENTER from any obligation under the RENTAL including RENTER'S obligations to make RENTAL Payments. RENTER also at its expense shall maintain public liability and third party property insurance naming RENTOR as an additional insured, in such form, amount and with companies acceptable to RENTOR. RENTER shall provide a certificate or other evidence of such insurances, which shall include a clause requiring 30 days prior notice to RENTOR of any cancellation or modification.
8. TITLE; PERSONAL PROPERTY. The Equipment is and at all times shall remain the sole property of RENTOR. No right, title or interest in the Equipment shall pass to RENTER other than the right to maintain possession and use of the Equipment for the full RENTAL Term, conditioned upon RENTER'S Compliance with the terms and conditions of the RENTAL. However, if this RENTAL is determined to be a RENTAL intended for security, RENTER grants RENTOR a purchase money security interest in the Equipment as security for the performance of all RENTER'S obligations under this RENTAL. RENTER agrees to keep the Equipment free and clear of all liens, claims and encumbrances. RENTOR may inspect the Equipment at any reasonable time.
9. UCC FILINGS. RENTER authorizes RENTOR to file a copy of this RENTAL as a financing statement and appoints RENTOR or RENTER'S attorney-in-fact to execute and file, on RENTER'S behalf, financing statements covering the Equipment. If requested, RENTER will deliver to RENTOR signed financing statements.
10. STATUTORY FINANCE RENTAL. IT IS THE INTENT OF THE PARTIES THAT THIS RENTAL QUALIFY AS A STATUTORY FINANCE RENTAL UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. RENTER HAS SELECTED BOTH (A) THE EQUIPMENT AND (B) THE SUPPLIER FROM WHICH RENTOR IS TO PURCHASE THE EQUIPMENT. RENTER REPRESENTS THAT IT HAS REVIEWED AND APPROVED THE SUPPLY CONTRACT COVERING THE PURCHASE OF THE EQUIPMENT FROM THE SUPPLIER. TO THE EXTENT PERMITTED BY APPLICABLE LAW, RENTER WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A RENTER BY ARTICLE 2A. RENTER MAY HAVE RIGHTS UNDER THE SUPPLY CONTRACT EVIDENCING THE RENTOR'S PURCHASE OF THE EQUIPMENT AND RENTER SHOULD CONTACT THE SUPPLIER FOR A DESCRIPTION OF ANY SUCH RIGHTS.
11. DEFAULT. RENTER shall be in default if: (a) RENTER fails to make any RENTAL Payment or other payment within five(5) days after the date the payment is due' (b) any representation or warranty made by RENTER is or becomes incorrect or RENTER fails to perform any other obligations under this RENTAL or in any other agreement with RENTOR (including without limitation, failure to provide proof of insurance, to allow RENTOR to inspect the Equipment, to maintain or return the Equipment in the condition required by this RENTAL or to keep the Equipment at the location on page 1 hereof) and this failure continues for 10 days after RENTOR sends RENTER notice of it; (c) any Guarantor of the RENTAL dies or does not perform the Guarantor's obligations under the guaranty; or (d) RENTER or any Guarantor files or has filed against it a petition in bankruptcy or seeks similar relief under state or federal receivership, insolvency laws or suffers a material adverse change in its financial condition, in RENTOR'S sole discretion.
12. REMEDIES. If a default occurs, RENTOR may do one or more of the following: (a) cancel this RENTAL and all other RENTALS or Rentals that RENTOR has entered into with RENTER; (b) require RENTER to immediately pay RENTOR, as compensation for loss of RENTOR'S bargain and not as a penalty, a sum equal to (1) the present value of all unpaid RENTAL Payments for the remainder of the RENTAL Term plus present value of the End of RENTAL Purchase Option, each discounted at 5% per year, compounded monthly, plus (2) all other amounts due or that become due under this RENTAL; (c) require RENTER to deliver the Equipment to RENTOR; (d) take peaceful possession of the Equipment with or without court order; and (e) exercise any other right or remedy available at law or in equity. Each right and remedy shall be cumulative and may be exercised singly or in combination. If RENTOR takes possession of the Equipment, RENTOR may sell or otherwise dispose of the Equipment with or without notice, at a public or private sale, and RENTOR will apply the net proceeds (after RENTOR has deducted all costs related to the sale or disposition of the Equipment) to the amounts that RENTER owes RENTOR. RENTER will remain responsible for any deficiency between such net proceeds and the amount set forth in subsection (b) of this section 13.
13. ASSIGNMENT. RENTER shall not assign, sublet, lend, transfer or pledge the RENTAL or the Equipment without RENTOR'S prior written approval. RENTOR may assign, transfer, pledge or sell RENTOR'S interest in the RENTAL and/or Equipment. Upon notification of such assignment, RENTER shall remit assigned payments directly to such assignee. RENTER agrees that any assignee will not be subject to any claims, defenses or set-off RENTER may have against RENTOR or any other party.
14. PURCHASE OPTION. Upon not less than 30 days written notice prior to expiration of the RENTAL Term, provided RENTER is not in default, RENTER shall have the option to purchase the Equipment for the Purchase Option Price set forth on page 1 of this RENTAL. If the Purchase Option Price is Fair Market Value, then RENTOR will use its reasonable judgment to determine the Equipment's in-use and in place fair market value. If RENTER disagrees with RENTOR'S determination, a mutually acceptable independent appraiser shall determine such fair market value. The RENTER shall pay all fees and expenses of the appraiser. On the last day of the RENTAL Term, upon payment of the Purchase Option Price, plus applicable taxes, RENTOR shall transfer its interest in the Equipment to the RENTER "AS IS" "WHERE IS". RENTOR may charge RENTER a fee for costs and expenses relating to the Rental of its interest in the Equipment.
15. AUTOMATIC RENEWAL. If RENTER fails to return the Equipment within 10 days of the expiration of the RENTAL Term (and has not exercised the End of RENTAL Purchase Option, if any), this RENTAL will automatically renew for an additional 12 month term and thereafter renew for successive 1 month terms until RENTER returns the Equipment at the end of the applicable renewal term. RENTER shall pay the monthly RENTAL Payments during such renewal term(s) as and when payable during the original RENTAL Term at the same RENTAL Payment amount paid during the last 12 months of the term.
16. RENTER'S EXPENSES. RENTER agrees to pay RENTOR upon demand all costs, including reasonable attorney's fees incurred by RENTOR in exercising any remedies hereunder.
17. AUTHORIZATION. RENTER and each Guarantor authorize RENTOR to obtain credit reports and bank and trade references from time to time and make other credit inquiries at RENTOR'S sole discretion. Upon RENTER'S (or such Guarantor's) request, RENTOR will inform RENTER or Guarantor whether RENTOR requested a personal credit bureau report and the name and address of the credit reporting agency that furnished the report.
18. INDEMNITY. RENTER shall indemnify RENTOR against, and hold RENTOR harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorney's fees arising out of, connected with, or resulting from the ordering, purchase, manufacturing, leasing, use, possession, operation, return or disposition of the Equipment.
19. NON-WAIVER. RENTOR'S failure to require performance by RENTER of any provisions of the RENTAL shall not be a waiver thereof.
20. SEVERABILITY. This RENTAL contains the entire agreement between the parties regarding the Rental of the Equipment. If any provision of the RENTAL is declared invalid, the remaining provisions shall remain in full force and effect.
21. MODIFICATION. RENTER hereby authorizes RENTOR to fill in dates and RENTOR'S name as well as make minor corrections in the RENTAL, but otherwise, the RENTAL shall not be changed except by written agreement executed by the parties.
22. INTENT. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time-price differential or interest (as applicable) permitted to be charged or collected under applicable law, and any such excess payment will be applied to RENTAL Payments in inverse order of maturity and any remaining excess shall be returned to the RENTER.
23. ORIGINAL COUNTERPART. For the chalet paper purposes, the original counterpart of this RENTAL is the one that bears our manual, original ink signature, whether it bears your (i) manual, original ink signature, (ii) a copy or facsimile transmission signature, or (iii) electronic signature. Whoever possesses the counterpart with our manual, original ink signature will have possession of the collateral under Section 9-305 of the Uniform Commercial Code. We may use such counterpart in any action to enforce our rights and remedies under this RENTAL.

RENTOR sign here

Title

Date

Approved as to form: John P. Phelan  
City Attorney

**NON APPROPRIATION RIDER TO RENTAL # 555043**

This Non-Appropriation Rider to the Equipment Rental dated as of \_\_\_\_\_, 2008 (the "Rental"), is by and between Kip America, Inc as Renter and City of Oceanside as Rentor. Capitalized terms used herein without definition shall be defined as provided in the Rental.

Notwithstanding anything contained in the Rental to the contrary,

1. Rentor presently intends to continue the Rental for its entire term and to pay all rentals relating thereto and shall do all things lawfully within its power to obtain and maintain funds from which the rentals and all other payments owing there under may be made. To the extent permitted by law, the person or entity in charge of preparing Rentor's budget will include in the budget request for each fiscal year during the term of the Rental the rentals to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all rentals coming due therein. The parties acknowledge that appropriation for rentals is a governmental function which Rentor cannot contractually commit itself in advance to perform and the Rental does not constitute such a commitment. However, Rentor reasonably believes that moneys in an amount sufficient to make all rentals can and will lawfully be appropriated and made available to permit Rentor's continued utilization of the Equipment in the performance of its essential functions during the term of the Rental.
2. If Rentor's governing body fails to appropriate sufficient moneys in any fiscal year for rentals or other payments due under the Rental and if other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Rentor shall give Renter immediate notice of such Non-Appropriation and provide written evidence of such failure by Rentor's governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by that date, immediately upon such Non-Appropriation; (ii) no later than the last day of the fiscal year for which appropriations were made for the rentals due under the Rental (the "Return Date"), Rentor shall return to Renter all, but not less than all, of the Equipment covered by the Rental, at Rentor's sole expense, in accordance with the terms hereof; and (iii) the Rental shall terminate on the Return Date without penalty or expense to Rentor and Rentor shall not be obligated to pay the rentals beyond such fiscal year, provided, that Rentor shall pay all rentals and other payments due under the Rental for which moneys shall have been appropriated or are otherwise available, provided further, that Rentor shall pay month-to-month rent at the rate set forth in the Rental for each month or part thereof that Rentor fails to return the Equipment as required herein.
3. The Rental shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Rental, and no liability on account thereof shall be incurred by the Rentor beyond the amount of such monies. The Rental is not a general obligation of the Rentor. Neither the full faith and credit nor the taxing power of the Rentor are pledged to the payment of any amount due or to become due under the Rental. It is understood that neither the Rental nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Rental.
4. The Rentor and Renter agree that they intend the Rental to be an operating Rental and that by the execution thereof, Rentor acquires no ownership interest in the Equipment whether vested or contingent. The Rentor's interest in the Equipment is limited to that of a Rentor and Renter retains all the rights of owner therein. Any provisions indicating to the contrary in this Rider are for precautionary purposes only.
5. The Rental and this Rider shall be governed by the laws of Michigan. Any provisions of the Rental or this Rider found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Rental or this Rider.
6. This Rider may be executed in several counterparts and all of which shall constitute but one and the same instrument.
7. This Rider shall be binding upon and inure to the benefit of the Rentor and Renter and their respective successors and assigns.
8. Except as modified herein the Rental remains in full force and effect.

**APPROVED AS TO FORM**  
**OCEANSIDE CITY ATTORNEY**

IN WITNESS WHEREOF, each of the parties hereto has caused this Rider to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**RENTOR:**

**RENTER:**

City of Oceanside	Kip America, Inc
-------------------	------------------

By: \_\_\_\_\_ Date

By: \_\_\_\_\_ Date

Title: \_\_\_\_\_

Title: REGIONAL SALES MANAGER

Approved as to form: John P. [unclear]  
City Attorney

## DELIVERY & ACCEPTANCE



Translating technology into productivity

**By signing below, you the Rentor, agrees:**

- A) That All Equipment described in the rental identified below ("Equipment") has been delivered, inspected, installed, and is unconditionally and irrevocably accepted by you as satisfactory for all purposes of the rental; and
- B) That we, KIP America, Inc., are authorized to purchase the Equipment and start billing you under the rental.

Rental #: <b>555043</b>	Customer #: <b>CIT028</b>
Rental Name: <b>City of Oceanside</b>	
Authorized Signature:	
Title:	Date:

KIP America  
 39575 13 Mile Road  
 Novi, MI 48377

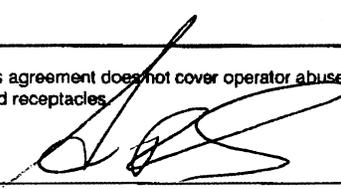
Tel: (800) 252-6793  
 Fax: (800) 672-1400  
 www.kipamerica.com

# KIP

## Maintenance Agreement

BILL TO: CITY OF OCEANSIDE INFORMATION TECHNOLOGY DEPT 300 N. COAST HIGHWAY OCEANSIDE CA, 92054		MACHINE LOCATION: SAME	
PHONE: ATTN: DEBRA BRISKI		PHONE:	
COVERAGE PERIOD		BEGINNING METER READING	
FROM:	TO:		
MODEL	SERIAL NO.	RATE	CONTRACT TERMS
KIP SYS7200COL (System consists of: MACH7000 & MACH2100)	S/N: PROVIDED ON INSTALL	\$190.00 /MONTH	<p>CONTRACT TERM IS 48 MONTHS</p> <p>Contract includes all travel, labor and parts excluding the following:</p> <ol style="list-style-type: none"> <li>1. Consumable items</li> <li>2. Glass Parts</li> </ol> <p>A meter charge will be applied at the rate of \$0.033 per square foot over the 5,000 square foot allowance and billed monthly.</p> <p>Maintenance contract will be invoiced with attached rental agreement #555043.</p> <p>*Complete online meter count submissions via <a href="http://www.kipservice.com">www.kipservice.com</a> between the 20<sup>th</sup> &amp; 25<sup>th</sup> of each month. If meter reading is not supplied on line Each month, an estimate of monthly Meter will be applied.</p> <p>Contract does not include operator abuse or neglect, fires, floods, or natural disaster.</p> <p>KIP America general business hours are Monday – Friday 8:30am to 5:00pm local time. (Federal/State/local holidays are excluded)</p>
PDF FORMAT PRINTING OPTION	DIGPDG-70000IPS	+  \$ .033 PER SQ. FT. OVER 5,000 SQ. FT. MONTHLY ALLOWANCE	
<p><u>Addendum to Section 3.G.g of Full Maintenance Terms and Conditions:</u></p> <p>KIP will supply phone/onsite support for the following KIP Software, the terms of this agreement noting the terms and conditions in the End User Software License Agreement:</p> <ul style="list-style-type: none"> <li>- KIP IPS Software</li> <li>- KIP Request</li> <li>- KIP Windows Driver</li> <li>- KIP AutoCAD Driver</li> <li>- KIP PrintNE</li> </ul>			

The equipment listed is to be maintained subject to the terms and conditions on the reverse side of this agreement. This agreement does not cover operator abuse or neglect. Contract does not include corona wires, glass parts or consumable items such as but not limited to toner, developer and receptacles.

CUSTOMER SIGNATURE: \_\_\_\_\_ KIP AMERICA SIGNATURE: 

PRINT NAME: \_\_\_\_\_ PRINT NAME: Amber Ross

TITLE: \_\_\_\_\_ TITLE: Customer Service Manager

DATE: \_\_\_\_\_ DATE: 4-18-08

Approved as to form:   
 City Attorney

# KIP AMERICA FULL SERVICE MAINTENANCE TERMS AND CONDITIONS

## 1. AGREEMENT

- A. This Agreement covers only the equipment described on the face hereof and does not include any equipment or accessories not listed thereon.
- B. During the term of this Agreement, specified on the face hereof, KIP America will maintain the Equipment in good working order in accordance with the terms and conditions set forth.
- C. This Agreement may not be assigned by Customer. Cancellation requires a 30-day written notice and is subject to penalty as set forth in Paragraph 4.
- D. Specifically excluded from this Agreement are consumable supplies necessary to test or operate equipment covered through this Agreement unless otherwise specified. Consumable supplies are designated as those supplies listed on the currently published Consumable Supply Price Sheet.
- E. All taxes levied or imposed, now or hereafter, by any government authority shall be timely paid by the Customer.
- F. This Agreement provides service for Equipment at the address specified on the face hereof. Customer agrees to be responsible for all costs associated with relocation initiated by Customer.
- G. In the event any equipment is moved to another location, this agreement is subject to an appropriate adjustment in the annual rate and meter change where applicable.

## 2. INVOICE/PAYMENT

- A. Maintenance Agreement charges are made payable in advance as specified on the face hereof. Renewal agreements will be at KIP America prevailing rates at the annual renewal date.
- B. With respect to Equipment subject to an associated meter charge, Customer agrees to provide meter readings to KIP America either by phone or by mail as specified by KIP America. If meter readings are not provided promptly to KIP America, meter charges may be estimated and invoiced accordingly.
- C. Invoices are payable upon receipt.

## 3. FULL SERVICE MAINTENANCE

- A. Service, as specified on the face hereof, will be provided by KIP America or its designated authorized dealer during normal business hours. Service at time other than KIP America's normal business hours shall be furnished on Customer's request on an "if available" basis at the "After Hours" rates for labor and travel in effect at the time such service work is performed.
- B. Customer agrees to provide KIP America access to the Equipment for performance of the Periodical Maintenance Program as specified by KIP America at a mutually agreed upon time or during performance of other maintenance service hereunder.
- C. KIP America has the right to install or replace developer if applicable to maintain good copy quality in performance of this Agreement.
- D. All parts determined to be irreparable by KIP America will be replaced under KIP America's sole judgment. Replaced parts become the property of KIP America.
- E. KIP America will install, without additional charge, improvements designated by KIP America as a "mandatory retrofit" for equipment.
- F. Optional equipment or upgrades designated as optional by KIP America will not be made available under this agreement for the Equipment, unless specified. Such optional equipment or upgrade will be made available under a separate license agreement.
- G. The basic maintenance fee does not include, and KIP America is not obligated to provide or perform:
  - a. Repair of damage or increase in service time caused by (i) failure of customer to provide continually a proper operating environment and supply of power as prescribed by the equipment manufacturer, (ii) accident, (iii) disaster, which shall include but not be limited to fire, flood, water, wind and lightning, (iv) neglect, abuse or misuse, (v) failure of Customer to follow the equipment manufacturer's published operating instructions, (vi) modification, service or repair of the equipment by other operating instructions, (vii) modification, service or repair of the equipment by other than KIP America personnel, (viii) use of the equipment for purposes other than for which designed, (ix) use of incompatible supplies, (x) defects or errors in software supplied by persons other than KIP America, or (xi) customer's denial of full and free access to the equipment or denial of departure from customer's site.

- b. Painting or refinishing the equipment or furnishing the material therefore,
- c. Relocation of equipment,
- d. Electrical work external to the equipment,
- e. Maintenance of optional components, accessories or peripherals or other optional devices not specifically listed in this Agreement,
- f. Installation or removal of equipment, components, accessories, peripherals or service parts, except pursuant to maintenance service which KIP America has agreed to perform under this Agreement,
- g. Software maintenance and support,
- h. Service of equipment that results from modifications, alterations, connections, changes in configuration or failure of operation of any EXTERNAL device, peripheral, host computing equipment or software not under the control of KIP America and
- i. Supplies, which are customer's responsibility or consumables, which may be provided by KIP America at additional charges.

- H. Repetitive service resulting from either a failure in replacing or updating recommended supplies which have exceeded their use through damage of normal wear or the performance of key operator duties as set forth during operator training at time of installation of Equipment will be subject to change at the current prevailing rates in effect.

- I. When service work beyond the scope of this Agreement is required, KIP America will submit a cost estimate for such service work as authorized by the Customer. A separate invoice will be rendered.

## 4. BREACH/CANCELLATION

- A. KIP America may cancel this agreement on breach by Customer of any term and conditions hereon, without prior notification.
- B. In the event of cancellation initiated by Customer, KIP America must receive cancellation notice from Customer 30 days in advance.
- C. Upon termination of this Agreement either by breach or cancellation, Customer shall forfeit all payments made annually in advance plus the linear meter charge for 30 days from the effective date of notice of cancellation. If the specified Agreement on the face hereof is an annual contract with the minimum charge payable monthly in advance, the Customer shall remain liable for the remaining monthly charges until the termination of the contract period as specified on the face hereof plus the linear meter charge for 30 days from the effective date of notice of cancellation.

## 5. FORCE MAJEURE

- A. KIP America shall not be responsible for failure to render service due to causes beyond its control.

## 6. GENERAL PROVISIONS

- A. Equipment Operators: Customer shall provide specified equipment operators trained to perform key operator duties as set forth during operator training at time of Equipment installation.
- B. Notices: All notices made pursuant to this Agreement will be effective upon mailing to KIP America and the Customer at the addresses on the face hereof.
- C. Headings: The headings and titles of this agreement are inserted only for convenience and shall not effect the interpretation or construction of any provision.
- D. Governing Law: The Agreement will be governed by and construed according to the laws of the State of Michigan.

## 7. ENTIRE AGREEMENT

- A. This Agreement shall become effective only after execution by Customer and KIP America in the (+) provided. It is expressly understood that no further form of acceptance, verbal or written, will be valid or binding and that this Agreement shall constitute the entire Agreement between the Customer and KIP America with respect to its subject matter, Irrespective of inconsistent or additional terms and conditions in Customer's Purchase Orders and any other documents submitted to KIP America by Customer, or in, representations made by KIP America personnel.