

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

12/18/2012

City Council Meeting Date
Agenda Items Only

Greg Tabor, Chief of Police Police Police
Submitted By **Division** **Department**


Action Required:

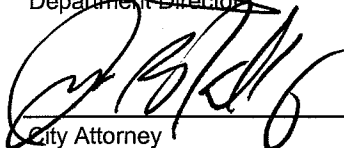
Approval of an ordinance to waive competitive bidding and to approve a two year contract with Motorola Inc for radio maintenance in the amount as follows: 2013- \$36,666 2014-\$37,308 plus tax.

\$40,058 Cost of this request	\$40,058 Category / Project Budget	Radio Maintenance Program Category / Project Name
various radio maint accounts Account Number	\$ - Funds Used to Date	Radio Maintenance Program / Project Category Name
Project Number	\$ 40,058.00 Remaining Balance	Various Funds Fund Name

Budgeted Item

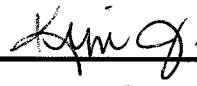
Budget Adjustment Attached

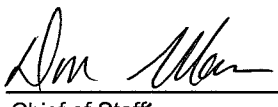
 11-28-12 Previous Ordinance or Resolution # _____
Department Director Date

 11-29-12 Original Contract Date: _____
City Attorney Date

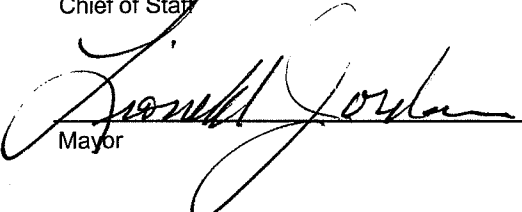
Original Contract Number: _____

Paul a. Butler 11-29-2012
Finance and Internal Services Director Date

Received in City 11-29-12 A08:18 RCVD
Clerk's Office


 12-3-12
Chief of Staff Date


Received in Mayor's Office


 _____
Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council Members

From: Greg Tabor, Chief of Police 

Date: November 15, 2012

Subject: Approval of a two year contract with Motorola Inc. for radio maintenance

PROPOSAL:

The City of Fayetteville's simulcast radio project was completed in 2012. This radio maintenance contract includes dispatch equipment coming off warranty and older radios that were upgraded in the project. Motorola Inc. offers factory authorized training, field technical representation services (engineers) and other technical support to provide maintenance on the Motorola Simulcast system. Motorola subcontracts with Smith Two Way a local authorized Motorola service and repair center in Fayetteville to help provide on-site service to the dispatch center. Due to the complexity of this type of system and Motorola's unique knowledge of the technical aspects of our system and how it connects to the Arkansas Wireless Network it is necessary for them to provide the maintenance for this system.

RECOMMENDATION:

Staff recommends approval of an ordinance to waive competitive bidding and to approve a two (2) year contract with Motorola for radio maintenance in the amount as follows: 2013-\$36,666 2014-\$37,308 plus tax.

BUDGET IMPACT:

Funding is included in the 2013 proposed budget.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A TWO-YEAR CONTRACT WITH MOTOROLA SOLUTIONS, INC. IN THE TOTAL AMOUNT OF \$73,974.00 PLUS APPLICABLE TAXES FOR RADIO MAINTENANCE TO THE CITY'S MOTOROLA SIMULCAST RADIO SYSTEM.

WHEREAS, the City's Motorola simulcast radio project was completed in 2012; and

WHEREAS, Motorola Solutions, Inc. provides factory authorized training, field technical representation services and other technical support to provide maintenance on the Motorola simulcast system; and

WHEREAS, due to the complexity of the system and Motorola Solutions, Inc.'s unique knowledge of the technical aspects of the system and how it connects to the Arkansas Wireless Network (AWIN) it is necessary for them to provide the necessary maintenance for the system;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines an exceptional situation exists in which competitive bidding is deemed not feasible or practical and therefore waives the requirements of formal competitive bidding and approves a two-year contract with Motorola Solutions, Inc. in the total amount of \$73,974.00 plus applicable taxes for radio maintenance to the City's Motorola simulcast radio system.

PASSED and APPROVED this 18th day of December, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



SERVICES AGREEMENT

Attn: National Service Support/4th fl
 1301 East Algonquin Road
 (800) 247-2346

Contract Number: S00001012130
 Contract Modifier: RN02-OCT-12 17:56:49

Date: 11/19/2012

Company Name:	Fayetteville, City Of
Attn:	
Billing Address:	113 W Mountain St
City, State, Zip:	Fayetteville, AR, 72701
Customer Contact:	
Phone:	

Required P.O.: No
 Customer #: 1011442374
 Bill to Tag #: 0001
 Contract Start Date: 01/01/2013
 Contract End Date: 12/31/2013
 Anniversary Day: Dec 31st
 Payment Cycle: ANNUAL
 PO #:

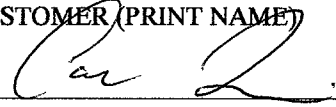
QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
		***** Recurring Services *****		
6	SVC01SVC1103C SVC273AA	NETWORK MONITORING SERVICE MCC7500	\$459.36	\$5,512.28
1	SVC281AA	DISPATCH CENTER LOCATION		
1	SVC01SVC0097A SVC413AE	RSA Comprehensive ENH: XTL5000	\$125.00	\$1,500.00
11	SVC417AE	ENH: XTS2500		
3	SVC420AE	ENH: XTS5000		
6	SVC01SVC1101C SVC822AA	INFRASTRUCTURE REPAIR WITH ADV REPL MCC 7500	\$552.24	\$6,626.88
1	SVC01SVC1104C SVC147AA	TECHNICAL SUPPORT SERVICE DISPATCH CENTER LOCATION	\$74.20	\$890.40
	SVC01SVC1413C	ONSITE INFRASTRUCTURE RESPONSE SERVICE - PREMIER OPTION	\$443.45	\$5,321.40
1	SVC218AC	ENH: ONSITE INFRASTRUCTURE RESPONSE-SITE		
6	SVC220AC	OPERATOR POSITIONS		
27	SVC01SVC1422C SVC26AC	LOCAL RADIO COMBO PACKAGE XTS2500	\$786.48	\$9,437.76
7	SVC607AB	XTS1500 - PORTABLE		
14	SVC619AB	XTL5000 - MOBILE		
10	SVC964AD	ENH: XTL2500		
12	SVC997AD	ENH: XTL1500		
11	SVC01SVC1423C SVC26AB	LOCAL RADIO SUPPORT SERVICE XTS2500	\$50.25	\$603.00
3	SVC27AB	ENH: XTS5000		
1	SVC587AB	XTL5000 - MOBILE		
6	SVC01SVC1405C	NETWORK PREVENTATIVE MAINTENANCE MCC 7500	\$152.31	\$1,827.72
6	SVC01SVC1102C	DISPATCH SERVICES MCC 7500	\$43.58	\$522.96
6	SVC04SVC0016C	SECURITY UPDATE SERVICE	\$368.58	\$4,423.00

SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS	Subtotal - Recurring Services	\$3,055.45	\$36,665.40
	Subtotal - One-Time Event Services	\$.00	\$.00
	Total	\$3,055.45	\$36,665.40
	Taxes	-	-
	Grand Total	\$3,055.45	\$36,665.40
THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA.			

Subcontractor(s)	City	State
MOTOROLA RADIO SUPPORT CENTER DEPT (KL775)	ROCKFORD	IL
MOTOROLA - SECURITY SERVICES - KL725	SCHAUMBURG	IL
MOTOROLA SOLUTIONS-MOTOROLA SECURITY SVCS (DO250)	SCHAUMBURG	IL
MOTOROLA SYSTEM SUPPORT CTR-CALL CENTER DO066	SCHAUMBURG	IL
MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT DO068	SCHAUMBURG	IL
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR
SMITH TWO WAY RADIO INC	FAYETTEVILLE	AR

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE _____ TITLE _____ DATE _____

CUSTOMER (PRINT NAME) _____

 MOTOROLA REPRESENTATIVE(SIGNATURE) _____ TITLE *CSM / SM* DATE *11/16/12*

Case Irwin _____ 501-366-3432
 MOTOROLA REPRESENTATIVE(PRINT NAME) _____ PHONE _____

Company Name: Fayetteville, City Of
 Contract Number: S00001012130
 Contract Modifier: RN02-OCT-12 17:56:49
 Contract Start Date: 01/01/2013

Service Terms and Conditions

Motorola Solutions, Inc. ("Motorola") and the City of Fayetteville ("City") hereby agree as follows:

Section 1 APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to City either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2 DEFINITIONS AND INTERPRETATION

- .1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.
- .2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.
- .3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3 ACCEPTANCE

City accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4 SCOPE OF SERVICES

- 4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.
- 4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.
- 4.3. If City purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.
- 4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, City will provide a complete serial and model number list of the Equipment. City must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. City's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.
- 4.5. City must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. City must promptly notify Motorola of any Equipment failure. Motorola will respond to City's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5 EXCLUDED SERVICES

□.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

□.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6 TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at City's location, City will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, City agrees to reimburse Motorola for those charges and expenses.

Section 7 CITY CONTACT

City will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Motorola.

Section 8 PAYMENT

Unless alternative payment terms are stated in this Agreement, Motorola will invoice City in advance for each payment period. All other charges will be billed monthly, and City must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. City will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, City's sole remedy is to require Motorola to re-

perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section

10

DEFAULT/TERMINATION

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by City to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

Section 11 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12 EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. Changes, modifications, or amendments in scope, price or fees to this Agreement shall not be allowed without a prior formal Agreement Amendment to be approved by Motorola and the Mayor and the City Council in advance of the change in scope, cost or fees. 12.2. City agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential to the extent permitted by law, and will be promptly returned at Motorola's request. City may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by City to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide City with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

City is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of City in any governmental matters.

Section 15 COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, City will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. City will safeguard all such property while it is in City's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by City for Motorola's use without charge and may be removed from City's premises by Motorola at any time without restriction.

Section 17 GENERAL TERMS

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State of Arkansas.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of City. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and City agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

CHECK REQUEST

Date: 1/1/2013 Vendor Number: 27860

Manual Check?

Mail? Yes No

Payable to: Motorola
PO Box 404059
Atlanta, GA 30384-4059

Remit to
Address Code: _____

Return check to: _____

Send copy to: K. Stocker

For: Maintenance Contract # S00001012130
Customer #1011442374 0001

Separate Check Code: _____

Bank Number: 012

Payable From: (Fund Name) General

Amount of Check: \$40,057.02

Charged as follows:

Account Name	Amount	Account Number						
		Fund	Dept.	Sub Dept.	Base	Detail	Project	Sub Project
Radio maintenance	1,586.98	5550	3950		5402	00		
Radio maintenance	1,096.23	1010	2710		5402	00		
Radio maintenance	2,703.93	1010	3020		5402	00		
Radio maintenance	1,223.70	9700	1910		5402	00		
Radio maintenance	280.43	5400	1820		5402	00		
Radio maintenance	27,182.37	1010	2600		5402	00		
Radio maintenance	841.29	1010	5100		5402	00		
Radio maintenance	191.20	2130	9131		5402	00		
Radio maintenance	420.65	1010	5260		5402	00		
Radio maintenance	2,771.17	1010	2900		5402	00		
Radio maintenance	261.31	5500	5000		5402	00		
Radio maintenance	1,497.76	2100	4100		5402	00		
Radio maintenance								
Radio maintenance								
Radio maintenance								
TOTAL	\$40,057.02							

Additional Approval:	
<input type="checkbox"/>	Does not meet Purchasing policy
<input type="checkbox"/>	Contract Payment
<input type="checkbox"/>	Other: _____

Prepared by: _____
Approved by: _____
Entered: _____

<u>Accounting Use - Receipting</u>
G/L Account Number _____
Key Code: _____

