RESOLUTION NO.: R-2013-080

Authorizing the City Manager to execute a Refund Agreement between the City of Columbia and the Central Midlands Regional Transit Authority

BE IT RESOLVED by the Mayor and City Council this ___ day of _____, 2013, that the Mayor or the City Manager is authorized to execute the attached Refund Agreement, or on a form to be approved by the City Attorney, between the City of Columbia and the Central Midlands Regional Transit Authority.

Requested by:

CMRTA

Approved by:

_____
City Manager

Approved as to form:

_____
City Attorney

_____
Mayor

ATTEST:

_____
City Clerk

Introduced:
Final Reading:

Last revised: 7/10/2013
13071492

LEGAL DEPARTMENT DRAFT

REFUND AGREEMENT
BETWEEN THE CITY OF COLUMBIA
AND THE CENTRAL MIDLANDS REGIONAL
TRANSIT AUTHORITY

This Refund Agreement (the "Agreement") is made and entered into this __ day of October, 2013, by and between the City of Columbia ("the City"), a body politic and corporate with such government rights, privileges, and liabilities as other municipalities possess under the provisions of the general laws of the State, and the Central Midlands Regional Transit Authority ("CMRTA"), a regional transit authority created and existing pursuant to South Carolina Code Section 58-25-10, *et seq.*, which has as its members the City, Richland County, Lexington County, and various municipalities therein, and has been created to provide a public transportation system.

WHEREAS, the City and SCE&G are parties to that certain Franchise Agreement dated February 20, 2002;

WHEREAS, by Ordinance 2010-160 enacted on February 15, 2011, the Franchise Agreement was amended to increase the franchise fee percentage from three (3%) to five (5%) percent;

WHEREAS, City Council restricted all of the revenue generated to the City by the two (2%) percent franchise fee percentage increase for public transportation;

WHEREAS, Richland County Council voted to place a penny sales tax referendum on the November 6, 2012 ballot from which a portion of the funds would be used to fund the Central Midlands Regional Transit Authority;

WHEREAS, the Mayor and City Council, by voice resolution on September 18, 2012, voted to reduce the franchise fee from five (5%) to three (3%), if the Richland County penny sales tax referendum passed on November 6, 2012;

WHEREAS, the Richland County penny sales tax referendum passed on November 6, 2012;

WHEREAS, collection of the penny sales tax commenced on May 1, 2013;

WHEREAS, the City obligated the additional two percent (2%) franchise fee to the CMRTA for the City's fiscal year 2012-2013;

WHEREAS, the City has paid over to CMRTA the amount of $3,800,000 for fiscal year 2012-2013;

WHEREAS, on June 30, 2012, SCE&G prepaid to the City the franchise fee for calendar year 2013 (the "2013 Franchise Fee") in accordance with the Franchise Agreement and the payment was based on a five (5%) percent franchise fee percentage;

WHEREAS, SCE&G would have continued to collect the advanced franchise fee of five percent (5%) from the City customers from May 1, 2013 through December 31, 2013;

WHEREAS, the City and SCE&G have entered into an agreement whereby SCE&G will forego recovery of the additional two percent (2%) franchise fee from City customers from May 1, 2013 through December 31, 2013 in exchange for the City's agreement to reimburse SCE&G these funds; and

WHEREAS, CMRTA has agreed to reimburse the City the amount of $2,626,350.04, which represents approximately 8/12 of the amount paid by the City to the CMRTA for fiscal year 2012-13.

NOW, THEREFORE, in consideration of the promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Agreement to Make Payments. The CMRTA agrees to pay the amount of $2,626,350.04, without interest, to the City and promises to make payments to the City in accordance with the repayment schedule set forth in Exhibit A attached hereto and incorporated herein until the City has been paid in full. This amount is being paid without regard to the amount of franchise fee paid by SC&EG to the City or the amount the City has agreed to reimburse SCE&G. Each payment will be made to the City within five (5) business days of the CMRTA's receipt of each quarterly payment of sales tax penny revenue beginning with the first quarter in 2014. The CMRTA has the right to prepay all or a portion of the outstanding balance at any time.

2. Binding Nature of Agreement. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the CMRTA and the City, and their respective successors in office. CMRTA shall act reasonably, diligently and in good faith to address all issues that may arise

during the implementation of the transactions that are the subject of this Agreement in a commercially reasonable manner so as to accomplish the intended purposes set forth herein, including entering into such other and further documents as are normally required for transactions of similar magnitude and complexity to appropriately address the duties and responsibilities of all parties.

3. Binding Obligation. The obligation of the CMRTA to remit payment to the City pursuant to this Agreement is a legally binding obligation.

4. Default. The failure of the CMRTA to make a payment, to satisfy a condition, or to perform an obligation under this Agreement, which failure shall go uncorrected for a period of thirty (30) days after written notice thereof, shall constitute a default as to the CMRTA.

5. Default Remedies. In the event of a default by the CMRTA, the City may seek an injunction or order of specific performance to collect all amounts then due and thereafter to become due from the CMRTA and to enforce all obligations of the CMRTA under this Agreement; provided, however, any remedies against CMRTA shall be limited to recovery of its respective payments that are the subject of this Agreement.

6. No Personal Liability. No obligation or agreement contained herein shall be deemed to be an obligation or agreement of any present, past, or future member, officer, agent or employee of the City or the CMRTA in any way other than in his or her official capacity, and neither members of the City Council or CMRTA, nor any official executing this Agreement shall be personally liable thereon or be subject to any personal liability or accountability by reason of the obligations or agreements of the City or the CMRTA contained in this Agreement.

7. Effect of Agreement. This Agreement constitutes the entire agreement between the City and the CMRTA. The payment of the amount reflected herein satisfies in full any financial obligations of the CMRTA to the City.

8. Amendments. This Agreement may not be effectively amended, changed, modified, altered or terminated, except in accordance with the express provisions of this Agreement or with the written consent of all parties hereto.

9. Captions. The captions and headings of this Agreement are for convenience only and are not to be used to interpret or define any or all of the provisions of this Agreement.

10. Headings. The headings and other titles to paragraphs of this Agreement are inserted solely for the convenience of reference. None shall in any way define, limit, extend or aid in the construction of the scope, extent, meaning or intent of this Agreement.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

12. No Construction Against Drafter. The parties hereby acknowledge that they have reviewed this Agreement and concur that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision of this Agreement.

13. Severability. If any provision of this Agreement or any obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect any other provision, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, obligation, or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

14. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of South Carolina and for all purposes shall be governed by and construed in accordance with the laws of the State of South Carolina, and by their signatures herein below, the parties consent to the exclusive jurisdiction of the courts of Richland County for resolution of any dispute arising hereunder.

15. Further Resolutions. The CMRTA further agrees to adopt one or more resolutions as necessary to effect the agreements provided for in this Agreement.

16. Notices. All notices or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by U.S. Mail addressed as follows:

If to the City:
City of Columbia, South Carolina
Attn: City Manager
P.O. Box 147
Columbia, South Carolina 29217

With a copy to:
City of Columbia, South Carolina
Attn: City Attorney
P.O. Box 667
Columbia, South Carolina 29201

If to the CMRTA:

Central Midlands Regional Transit Authority
Attn: Board Chair
P.O. Box 214
Columbia, South Carolina 29202

With a copy to:

Francenia B. Heizer, Esquire
General Counsel
P. O. Box 11390
Columbia, South Carolina 29211

17. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person, other than the parties hereto, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Agreement on the respective dates indicated below.

WITNESSES (as to the City):

_____

_____

THE CITY OF COLUMBIA (Seal)

By: _____
Signature

Print name: _____
Its: _____
Date: _____

WITNESSES (as to CMRTA):

_____

_____

CENTRAL MIDLANDS REGIONAL TRANSIT AUTHORITY (Seal)

By: _____
Signature

Print name: _____
Its: _____
Date: _____

EXHIBIT A

Payment Number	Payment Date	Payment Amount
1	5 business days after receipt of revenue from State Treasurer for 1st quarter of 2014	$ 328,293.75
2	5 business days after receipt of revenue from State Treasurer for 2nd quarter of 2014	328,293.75
3	5 business days after receipt of revenue from State Treasurer for 3rd quarter of 2014	328,293.75
4	5 business days after receipt of revenue from State Treasurer for 4th quarter of 2014	328,293.75
5	5 business days after receipt of revenue from State Treasurer for 1st quarter of 2015	328,293.76
6	5 business days after receipt of revenue from State Treasurer for 2nd quarter of 2015	328,293.76
7	5 business days after receipt of revenue from State Treasurer for 3rd quarter of 2015	328,293.76
8	5 business days after receipt of revenue from State Treasurer for 4th quarter of 2015	328,293.76
		$2,626,350.04