

STATE OF NORTH CAROLINA

78X CELANESE CORRIDOR EXPRESS TRANSIT SERVICE

COUNTY OF MECKLENBURG

CONTRACT NO: 1000159

THIS SERVICES CONTRACT (the "Contract") is made and entered into as of _____, 2009 (the "Effective Date"), by and between the City of Rock Hill, a municipal corporation organized under the laws of the State of South Carolina (hereinafter "Rock Hill"), and the City of Charlotte, a municipal corporation organized under the laws of the State of North Carolina (hereinafter "the City"), through the Charlotte Area Transit System (hereinafter "CATS")

RECITALS

WHEREAS, the City operates and provides, through CATS and/or its contractor, public transit service within Mecklenburg County thereby reducing vehicular traffic on the roadways in Mecklenburg County, North Carolina; and

WHEREAS, the parties desire to commence regional transit service between Charlotte and Rock Hill in accordance with the CATS Mission, Objective and Financial Policies and upon other terms and conditions as agreed upon by the parties; and

WHEREAS, pursuant to North Carolina General Statute 160A-461 and S.C. Code Ann. § 5-7-30, the parties may enter into Interlocal Agreements to jointly undertake public enterprises such as the provision of regional transit service.

NOW, THEREFORE, in consideration of the covenants, terms and conditions hereinafter set forth, the parties hereby agree as follows:

CONTRACT

1. **INCORPORATION OF EXHIBITS.** The following Exhibits are attached to this Contract and are incorporated into and made a part of this Contract by reference:

Exhibit A: Regional Express Service Operating Costs
Exhibit B: Regional Express Service Schedule

Each reference to this Contract shall be deemed to include all Exhibits. Any conflict between language in an Exhibit or Appendix and language in the main body of this Contract shall be resolved in favor of the main body of this Contract.

2. **DESCRIPTION OF WORK.**

SERVICE. The City, in consultation with Rock Hill, shall establish appropriate service routes and schedules and shall define such other components related to the service to be provided pursuant to this Contract. The proposed service schedule is attached as Exhibit B. Material changes from this schedule will not be made without the consent of both parties.

The purpose of this Agreement is to set forth terms and conditions by which Charlotte, acting through CATS, will provide Transit Service connecting the Celanese Corridor to the LYNX Blue Line I-485/South Blvd light rail station and to ensure such service shall be provided consistently and in accordance with the CATS Mission, Objectives and Financial Policies

3. **COMPENSATION.**

3.1 The estimated project costs and estimated financial commitment of the parties are set forth in **Exhibit A**, and said attachment is incorporated herein by reference as if fully set forth in this section; provided, each party's final and total financial commitment to the project shall be

determined and calculated on the basis of each party's proportional share of the actual costs of the service, as each party's proportional share is set forth in **Exhibit A**. As set forth in **Exhibit A**, the estimated compensation from Rock Hill to the City is \$70,132 per year. In no event shall Rock Hill be obligated to pay the City more than \$75,000 per year.

4. INVOICES.

The City shall submit invoices to Rock Hill on a monthly basis, unless otherwise agreed to by the parties. Rock Hill shall remit payment to the City within thirty (30) days of receiving each monthly invoice. Rock Hill shall remit all payments to:

City of Charlotte
 Attention: Finance/Accounting
 600 East Fourth Street, 10th Floor
 Charlotte, NC 28202

5. ADMINISTRATION.

Each party shall designate a project administrator to oversee the administration of this Agreement. The project administrators shall be responsible for the coordination, management and oversight of the project necessary to accomplish the objectives of this joint undertaking between the parties. Until the parties give written notice otherwise, the project administrators are:

For Charlotte:	For Rock Hill:
Mr. Larry Kopf	Frances M. Thomas
Charlotte Area Transit System	City of Rock Hill
600 East Fourth Street	P O Box 11706
Charlotte, NC 28202	Rock Hill, SC 29731-1706
Telephone: 704-432-0497	Telephone: 803-329-7087
Fax: 704-353-0797	Fax: 803-329-7228
Email: lkopf@ci.charlotte.nc.us	Email: ftthomas@cityofrockhill.com

6. SERVICE QUALITY.

The parties agree that the objective of the Rock Hill Regional Transit Service is to operate in a manner that (i) is safe, reliable, efficient and effective and (ii) maximizes potential ridership. To ensure quality service and to promote effective communications, the parties will meet at regular intervals.

7. TERMINATION.

- 7.1 **TERM.** This Agreement is effective September 1, 2009 and shall remain in effect through August 30, 2010 with the option by either the city or Rock Hill to extend the Agreement for up to four (4) additional one-year terms subject to the evaluation of the costs of the service and the annual appropriation of funds for the service by each city.
- 7.2 **TERMINATION FOR CONVENIENCE.** Either party may terminate this Contract at any time without cause upon sixty (60) days written notice to the other party. In case of termination for convenience by Rock Hill the parties shall negotiate and equitable settlement of termination costs. If Rock Hill elects to terminate its subsidy with respect to any portion of the service provided under this Contract on at least sixty (60) days written notice, this Contract shall terminate for convenience as to such service at the end of that period.
- 7.3 **TERMINATION FOR DEFAULT.** By written notice the City may terminate this Contract for default in the event Rock Hill fails to pay an overdue invoice within thirty (30) days after

receiving written notice from the City that: (i) such invoice is overdue, and (ii) the City intends to exercise its right to terminate this Contract pursuant to this Section in the event it is not paid within said thirty (30) day period. The City may exercise the option to resume service upon such terms and conditions as the parties may agree in writing. The City shall not be obligated to resume service after a termination for default of this Contract. The City may resume service only to the extent that the resumption of service is consistent with the CATS Financial and Service Policies, as those policies may be amended.

7.4 NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS. Termination of this Contract shall not relieve Rock Hill of the obligation to pay any fees, taxes or other charges then due to the City; to file any daily, monthly, quarterly or annual reports; or relieve Rock Hill from any claim for damages previously accrued or then accruing against Rock Hill.

7.5 AUTHORITY TO TERMINATE. The following persons are authorized to terminate this Contract on behalf of the City: (a) the City Manager, any Assistant City Manager or any designee of the City Manager; (b) the Key Business Executive of the City Key Business Unit responsible for administering this Contract. The following persons are authorized to terminate this Contract on behalf of Rock Hill: the City Manager.

8. NOTICES AND PRINCIPAL CONTACTS.

Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For Charlotte:	For Rock Hill:
Daniel Edes	Frances M. Thomas
Charlotte Area Transit System	City of Rock Hill
600 East Fourth Street	P O Box 11706
Charlotte, NC 28202	Rock Hill, SC 29731-1706
Telephone: 704-432-2567	Telephone: 803-329-7087
Fax: 704-632-8292	Fax: 803-329-7228
Email: dedes@ci.charlotte.nc.us	Email: fthomas@cityofrockhill.com

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall further be copied to the following (in addition to being sent to the individuals specified above):

For Charlotte:	For Rock Hill:
John Joye	Paul W. Dillingham
City of Charlotte Attorney's Office	Spencer & Spencer, P.A.
600 East Fourth Street	226 East Main Street, Ste. 200
Charlotte, NC 28202	Rock Hill, SC 29730
Telephone: 704-432-1271	Telephone: 803-327-7191
Fax: 704-432-0487	Fax: 803-327-3868
Email: joye@ci.charlotte.nc.us	Email: pauldillingham@spencerfirm.com

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice that is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

9. MISCELLANEOUS.

- 9.1. **ENTIRE CONTRACT.** This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral. The City reserves the right to evaluate and modify or terminate the service in accordance with adopted CATS Financial and Service Policies, as those policies may be amended from time to time.
- 9.2. **AMENDMENT.** Both parties have the right to amend this contract within the guidelines set forth. No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 9.3. **GOVERNING LAW, JURISDICTION AND VENUE.** North Carolina law shall govern the interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). Any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.
- 9.4. **BINDING NATURE AND ASSIGNMENT.** This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 9.5. **CITY NOT LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES.** The City shall not be liable to Rock Hill its agents, or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City, or any other consequential, indirect or special damages or lost profits related to this Contract.
- 9.6. **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 9.7. **NO PUBLICITY.** No advertising, sales promotion or other materials of Rock Hill or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City. Notwithstanding the forgoing, the parties agree that Rock Hill may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.
- 9.8. **REPORTS.** The City and/or its contractor shall maintain service-related records, including ridership numbers, in such formats as the parties may agree. Such records shall be available to Rock Hill for examination and inspection upon request or according to any scheduled reporting periods to which the parties may agree.

- 9.9 APPROVALS. All approvals or consents required under this Contract must be in writing.
- 9.10 WAIVER. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights. No delay or omission by either party to exercise any right or remedy it has under this Contract shall impair or be construed as a waiver of such right or remedy. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant.
- 9.11 SURVIVAL OF PROVISIONS. All provisions of this Contract which by their nature and effect are required to be observed, kept or performed after termination of this Contract shall survive the termination of this Contract and remain binding thereafter, including but not limited to the following
- Section 7 "Termination"
 - Section 8.4 "No Effect on Taxes, Fees, Charges, or Reports"
 - Section 9 "Indemnification"
 - Section 10 "Notices"
 - Section 11 "Miscellaneous"
- 9.12 FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES. The City and Rock Hill agree to be aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Work. The City and Rock Hill further agree at all times during the term of this Contract to be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work. CATS will agree to abide by all applicable federal, state, or local laws and regulations.
- 9.13 CONSTRUCTION OF TERMS. Each of the parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 9.14 RELATIONSHIP OF THE PARTIES. The relationship of the parties established by this Contract is solely that of independent contractors. Nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, co-owners or otherwise as participants in a joint venture. Neither party nor its agents or employees is the representative of the other for any purpose, and neither party has power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.

10.

COMMERCIAL NON-DISCRIMINATION.

The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). As a condition of entering into this Contract, Rock Hill agrees to comply with the Non-Discrimination Policy and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, Rock Hill shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall Rock Hill retaliate against any person or entity for reporting instances of such discrimination. Rock Hill shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts,

provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

Rock Hill understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of Rock Hill from participating in City contracts and other sanctions.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed on the date first written above.

ATTESTED:

THE CITY OF ROCK HILL

BY: _____

BY: _____

TITLE: _____

TITLE: _____

ATTESTED:

CITY OF CHARLOTTE:

BY: _____

BY: _____

CITY CLERK

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

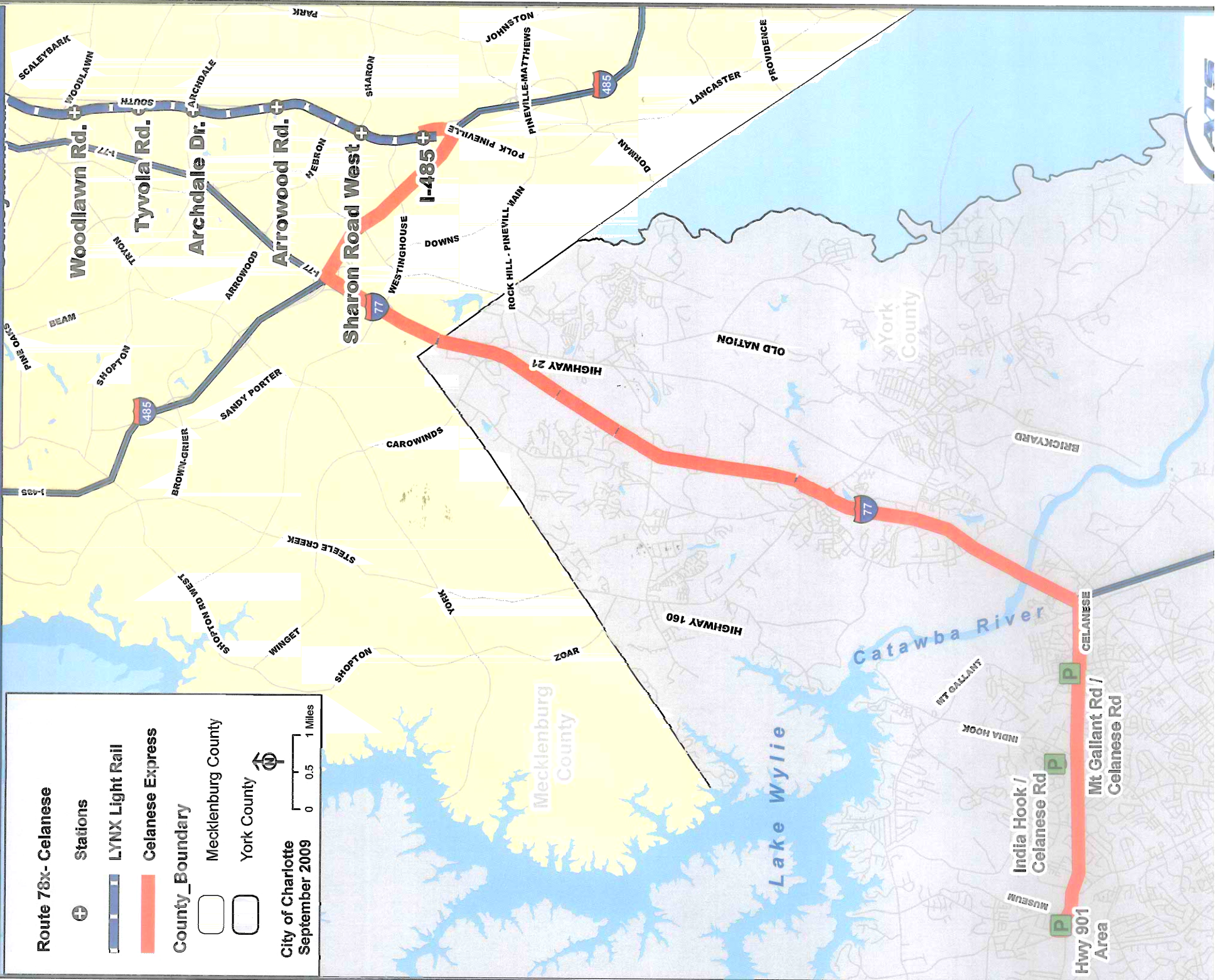
DEPUTY FINANCE OFFICER _____

DATE _____

EXHIBIT A
ROUTE 78X – CELANESE CORRIDOR EXPRESS TRANSIT SERVICE
ANNUAL OPERATING COSTS

Wal-Mart Area, India Hook, Mt. Gallant I-485	Vehicle	30 ft
Estimated Annual Operating Expense		\$123,262
Estimated Fare Revenue		\$53,130
Net		\$70,132

Celanese Express Route



Route 78x- Celanese

- ⊕ Stations
- LYNX Light Rail
- Celanese Express

County_Boundary

- Mecklenburg County
- York County

City of Charlotte
September 2009

0 0.5 1 Miles

Route 78x- Celanese

⊕ Stations

LYNX Light Rail

Celanese Express

County_Boundary

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