

LETTER OF REPRESENTATION

September __, 2013

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Charlotte, North Carolina

Robert W. Baird & Co.
Winston-Salem, North Carolina

**[\$[2013A Amount]
Limited Obligation Bonds
Series 2013A**

**[\$[2013B Amount]
Taxable Limited Obligation Bonds
Series 2013B**

**Evidencing Proportionate Undivided Interests
in the Rights to Receive Certain Revenues Pursuant to
an Installment Purchase Contract
Between New Durham Corporation and the
CITY OF DURHAM, NORTH CAROLINA**

Ladies and Gentlemen:

This letter is being delivered to Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Robert W. Baird & Co. (together, the “*Underwriters*”), in consideration for your entering into a Contract of Purchase dated the date hereof (the “*Purchase Contract*”) with New Durham Corporation (the “*Corporation*”) for the purchase of the above-referenced Limited Obligation Bonds, Series 2013A (the “*2013A Bonds*”) and Taxable Limited Obligation Bonds, Series 2013B (the “*2013B Bonds*” and, collectively with the 2013A Bonds, the “*Bonds*”). Pursuant to the Purchase Contract, the Underwriters have agreed to purchase from the Corporation, and the Corporation has agreed to sell to the Underwriters the Bonds. In order to induce the Corporation to enter into the Purchase Contract and as consideration for the execution, delivery and sale of the Bonds by the Corporation and the purchase of them by the Underwriters, the undersigned, the City of Durham, North Carolina (the “*City*”), makes the representations, warranties and covenants contained in this letter. Unless the context clearly indicates otherwise, each capitalized term used in this Letter of Representation will have the meaning set forth in the Purchase Contract.

1. *Approval of Official Statement.* The City has heretofore authorized and approved the Preliminary Official Statement dated September 17, 2013 (the “*Preliminary Official Statement*”) and hereby authorizes and approves the final Official Statement dated September __, 2013 (the “*Final Official Statement*,” the Preliminary Official Statement and any amendments or supplements that may be authorized for use with respect to the Bonds are herein referred to collectively as the “*Official Statement*”). The City consents to the distribution and use of the Preliminary Official Statement and Final Official Statement by the Underwriters.

The City agrees to deliver the Official Statement to the Underwriters, in such quantity as may be requested by the Underwriters no later than the earlier of (i) seven business days after the date of the Purchase Contract or (ii) one business day prior to the Closing, in order to permit the Underwriters to comply with the Rule, and the applicable rules of the MSRB, with respect to distribution of the Official Statement. The City agrees to prepare the Official Statement, including any amendments thereto, in word-searchable PDF format as described in the MSRB's Rule G-32 and to provide the electronic copy of the word-searchable PDF format of the Official Statement to the Underwriters no later than one business day prior to the Closing to enable the Underwriters to comply with MSRB Rule G-32.

The City will take all actions and provide all information reasonably requested by the Underwriters to ensure that the Official Statement at all times during the initial offering and distribution of the Bonds does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Neither the Corporation nor the City will amend or supplement, or approve any amendment or supplement of, the Official Statement without the prior written consent of the Underwriters (which consent will not be unreasonably withheld); provided, however, that, if between the date of this Purchase Contract and 25 days from the end of the underwriting period, as defined below, any event occurs or any fact is disclosed which might cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City will promptly notify the Underwriters, and, if in the opinion of the Underwriters, such event or disclosure requires the preparation and publication of a supplement or amendment to the Official Statement, the City will supplement or amend the Official Statement in the form and manner approved by the Underwriters. For purposes of this Letter of Representation, the "*end of the underwriting period*" will mean the later of (i) the Closing, or (ii) the time that the Underwriters no longer retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Unless otherwise notified in writing by the Underwriters and the City shall treat the Closing as the "*end of the underwriting period*."

The City represents and warrants that (a) it deems the Preliminary Official Statement final as of its date except for omitted information permitted under paragraph (b)(1) of the Rule, and (b) the Official Statement constitutes as of this date a final official statement within the meaning of paragraph (e)(3) of the Rule.

2. *Representations, Warranties and Covenants of City.* The City represents and warrants to and agrees with the Underwriters that:

(a) the City is a political subdivision, validly organized and existing under the laws of the State of North Carolina;

(b) on the date hereof and at the Closing Date, the statements and information contained in the Official Statement, except for the information contained under the captions "**INTRODUCTION–Book-Entry-Only,**" "**THE CORPORATION,**" "**THE LOCAL GOVERNMENT COMMISSION**" and "**UNDERWRITING**" and in Appendices D and E thereto, are and will be true, correct and complete in all material respects and do not and will not

contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(c) the audited financial report of the City for the year ended June 30, 2012, included in Appendix B to the Official Statement, presents fairly the financial position of the City for the period specified, and such financial report and statements have been prepared in conformity with generally accepted accounting principles consistently applied in all material respects, except as otherwise stated in the notes thereto;

(d) other than as set forth in or contemplated by the Official Statement, since June 30, 2012, there has been no material adverse change in the general affairs, financial position, results of operations or condition, financial or otherwise, of the City, and the City has not incurred liabilities that would materially affect the ability of the City to discharge its obligations under this Letter of Representation, the Deed of Trust and the Contract (collectively, the “**City Documents**”), direct or contingent;

(e) the City has received and there remain currently in full force and effect, or will receive prior to the delivery of the Bonds, all consents, approvals, authorizations and orders of governmental or regulatory authorities that would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the City of its obligations under the City Documents;

(f) at a meeting of the City Council of the City that was duly called and at which a quorum was present and acting throughout, the City Council of the City duly approved the execution and delivery by the City of the City Documents;

(g) the approval, execution and delivery of the City Documents by the City and compliance with the provisions thereof and hereof, under the circumstances contemplated thereby and hereby, do not and will not conflict with, constitute a breach of or default under, or result in the creation of a lien on any property of the City (except as contemplated therein) pursuant to applicable law or any indenture, bond order, deed of trust, mortgage, agreement or other instrument to which the City is a party or by which the City is bound, or conflict with or violate any applicable law, administrative rule, regulation, judgment, court order or consent decree to which the City is subject;

(h) to the best of its knowledge, after due and reasonable investigation, there is no claim, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, or public board or body, pending or threatened (i) contesting the corporate existence or powers of the City or the titles of the officers of the City to their respective offices, (ii) seeking to prohibit, restrain or enjoin the collection of revenues by the City or the application of the proceeds of the Bonds wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position of the City or the operation of its facilities or the validity or enforceability of the City Documents, (iii) contesting, questioning or affecting the validity of the City Documents, (iv) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Final Official Statement (nor, to the best knowledge of the City, is there any basis therefor), (v) challenging the right of the City to

complete the 2013 Projects, or (vi) challenging the transactions contemplated by the City Documents or the Purchase Contract;

(i) the City is not in default on the payment of the principal of or interest on any indebtedness for borrowed money or under any instrument relating to such indebtedness and no event has occurred and is continuing which, with the lapse of time or the giving of notice or both, might constitute an event of default under any such instrument, and no event has occurred which with the passage of time or the giving of notice, or both, would constitute an event of default as defined in the Contract;

(j) the City will furnish such information and will cooperate with the Underwriters in taking such actions as the Underwriters may reasonably request to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of any state and other jurisdictions of the United States which the Underwriters may designate; provided, however, that the City will not be required to execute a special or general consent to service of process or qualify as a foreign corporation in connection with such qualification;

(k) the City will take all action and provide all information required to be taken or provided by the Corporation under the Purchase Contract in connection with the preparation and distribution of the Official Statement, and the terms and conditions of the Purchase Contract relating to such preparation and distribution, including without limitation the provisions of Section 2 thereof, are incorporated by reference in this Letter of Representation, mutatis mutandis;

(l) on the Closing Date, the City Documents will have been duly authorized, executed and delivered and will constitute valid and binding obligations of the City enforceable in accordance with their terms (except insofar as the enforcement thereof may be limited by bankruptcy, insolvency or similar laws relating to the enforcement of creditors' rights);

(m) if, at any time prior to the later of (i) receipt of notice from the Underwriters pursuant to Section 2(b) of the Purchase Contract that Official Statements are no longer required to be delivered under the Rule (as defined in the Purchase Contract) or (ii) 90 days after the Closing, any event occurs as a result of which the Preliminary Official Statement or the Final Official Statement as then amended or supplemented might include an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the City shall promptly notify the Underwriters thereof in writing; provided, however, that the City shall have such obligations with respect to information in the Preliminary Official Statement and Final Official Statement concerning and supplied by the Corporation or the Underwriters only to the extent the City has actual knowledge or notice of any such event; any information supplied by the City for inclusion in any amendments or supplements to the Preliminary Official Statement or Final Official Statement will not contain any untrue or misleading statement of a material fact relating to the City or omit to state any material fact relating to the City necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and on the request of the Underwriters therefor, the City shall prepare and deliver to the Underwriters at the City's expense as many copies of an amendment or supplement which will correct any untrue statement or omission as the Underwriters may reasonably request;

(n) in the Contract the City will covenant to comply with the information reporting requirements adopted by the Securities and Exchange Commission or the Municipal Securities Rulemaking Board with respect to obligations such as the Bonds;

(o) the City has not been notified of any listing or the proposed listing by the Internal Revenue Service as an issuer whose arbitrage certifications may not be relied upon; and

(p) any certificate signed by any official of the City and delivered to the Underwriters will be deemed to be a representation by the City to the Underwriters as to the statements made therein.

3. *Indemnification.*

(a) To the fullest extent permitted by applicable law, the City agrees to indemnify and hold harmless the Underwriters against any and all losses, damages, expenses (including reasonable legal and other fees and expenses), liabilities or claims (or actions in respect thereof), to which the Underwriters or the other persons described in subsection (b) of this Section may become subject under any federal or state securities laws or other statutory law or at common law or otherwise, caused by or arising out of or based upon any breach (or alleged breach) by the City of any of the covenants, representations or warranties herein or any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in the Official Statement or caused by any omission or alleged omission from the Official Statement of any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(b) The indemnity provided under this Section will extend to the extent permitted by applicable law upon the same terms and conditions to each officer, director, employee or agent of the Underwriters, and each person, if any, who controls either of the Underwriters within the meaning of Section 15 of the Securities Act of 1933, as amended or Section 20 of the Securities Exchange Act of 1934, as amended. Such indemnity will also extend, without limitation, to any and all expenses whatsoever reasonably incurred by any indemnified party in connection with investigation, preparing for or defending against, or providing evidence, producing documents or taking any other reasonable action in respect of, any such loss, damage, expense, liability, or claim (or action in respect thereof), whether or not resulting in any liability, and will include the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever as set forth herein if such settlement is effected with the written consent of the City.

(c) Within a reasonable time after an indemnified party under subsections (a) and (b) of this Section has been served with the summons or other first legal process or has received written notice of the threat of a claim in respect of which an indemnity may be claimed, such indemnified party must, if a claim for indemnity in respect thereof is to be made against the City under this Section, notify the City in writing of the commencement thereof; but the omission to so notify the City will not relieve it from any liability that it may have to any indemnified party other than pursuant to subsections (a) and (b) of this Section. The City will be entitled to participate at its own expense in the defense, and if the City so elects within a reasonable time after receipt of such notice, or if all indemnified parties seeking indemnification in such notice so

direct, the City must, to the fullest extent permitted by applicable law, assume the defense of any suit brought to enforce any such claim, and such defense will be conducted by counsel chosen promptly by the City and reasonably satisfactory to the indemnified party; provided, however, that, if the defendants in any such action include such an indemnified party and the City, or include more than one indemnified party, and any such indemnified party has been advised by its counsel that there may be legal defenses available to such indemnified party that are different from or additional to those available to the City or another indemnified party, and that in the reasonable opinion of such counsel are sufficient to make it undesirable for the same counsel to represent such indemnified party and the City, or another defendant indemnified party, such indemnified party will have the right to employ separate counsel in such action (and the City will not be entitled to assume the defense thereof on behalf of such indemnified party), and in such event the reasonable fees and expenses of such counsel will, to the fullest extent permitted by applicable law, be borne by the City. Nothing contained in this subsection (c) will preclude any indemnified party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the City hereunder.

(d) If the indemnification provided for in subsections (a) and (b) of this Section is unavailable to or insufficient to hold harmless and indemnify any indemnified party in respect of any losses, damages, expenses, liabilities, or claims (or actions in respect thereof) referred to therein, then the City, to the extent permitted by applicable law, on the one hand, and the Underwriters, on the other hand, will contribute to the amount paid or payable by the indemnified party as a result of such losses, damages, expenses, liability or claims (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the City on the one hand and the Underwriters on the other hand from the offering of the Bonds. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, or if the indemnified party failed to give the notice required under the subsection (c) above, then the City, to the extent permitted by applicable law, on the one hand and the Underwriters on the other hand will contribute to such amount paid or payable by the indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the City on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, damages, expenses, liabilities or claims (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the City on the one hand and the Underwriters on the other hand will be deemed to be in such proportion so that the Underwriters are responsible for that portion represented by the percentage that the underwriting discount payable to the Underwriters hereunder (i.e., the excess of the aggregate public offering price for the Bonds as set forth on the cover page of the Official Statement over the price to be paid by the Underwriters to the City upon delivery of the Bonds as specified in Section 1 of the Purchase Contract) bears to the aggregate public offering price as described above, and the City is responsible for the balance. The relative fault will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the City on the one hand or the Underwriters on the other hand and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

In the event the Underwriters have knowledge of a claim subject to the contribution provided by this subsection (d), the Underwriters agree within a reasonable time of obtaining

such knowledge, to convey notice of such claim to the City. It is agreed and understood that if the Underwriters fail under the circumstances set forth in the preceding sentence, to convey the above referenced notice to the City, then the City will not be obligated to provide contribution pursuant to this subsection (d).

The City and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by any method of allocation that does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, damages, expenses, liabilities or claims (or actions in respect thereof) referred to in this subsection (d) will be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim.

(e) The indemnity and contribution provided by this Section will be in addition to any other liability that the City may otherwise have hereunder, at common law or otherwise, and is provided solely for the benefit of the Underwriters and each director, officer, employee, agent, attorney and controlling person referred to therein, and their respective successors, assigns and legal representatives, and no other person will acquire or have any right under or by virtue of such provisions of this Letter of Representation.

4. *Survival of Representations, Warranties and Covenants.*

All representations, warranties and agreements in this Letter of Representation will survive regardless of (a) any investigation or any statement in respect thereof made by or on behalf of the Underwriters, (b) delivery of any payment by the Underwriters for the Bonds hereunder, and (c) any termination of the Purchase Contract.

5. *Binding on Successors and Assigns.*

This Letter of Representation will be binding upon the City and the successors and assigns of the City and inure solely to the benefit of the Underwriters and, to the extent set forth herein, any director, officer, employee, or agent of the Underwriters and, to the extent set forth herein, persons controlling the either of the Underwriters, and their respective personal representatives, successors and assigns, and no other person or firm or entity will acquire or have any right under or by virtue of this Letter of Representation. Acceptance of this Letter of Representation by the Underwriters is waived.

CITY OF DURHAM, NORTH CAROLINA

By: _____
City Manager