

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: August 11, 2015 **CUT OFF DATE:** ___

RESOLUTION X ORDINANCE PUBLIC HEARING ___

ITEM TITLE:

A RESOLUTION TO AUTHORIZE THE EXTENSION OF THE GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND ("GOF") PERFORMANCE AGREEMENT BETWEEN THE CITY OF WINCHESTER, VIRGINIA, AND RUBBERMAID COMMERCIAL PRODUCTS LLC, AND THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER TO JUNE 30, 2016

STAFF RECOMMENDATION:

Proceed with Resolution approval.

PUBLIC NOTICE AND HEARING:

None required.

ADVISORY BOARD RECOMMENDATION:

No advisory board recommendation is required.

FUNDING DATA:

\$400,000 still required to be dispersed per GOF agreement if targets are met.

INSURANCE:

N/A

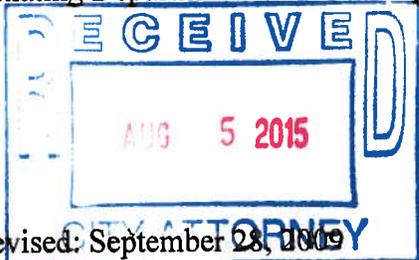
The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance _____	<i>B</i>	_____	<i>8-5-15</i>
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney _____	<i>[Signature]</i>	_____	<i>8/5/2015</i>
6. City Manager _____	<i>[Signature]</i>	_____	<i>8/6/15</i>
7. Clerk of Council _____	_____	_____	_____

Initiating Department Director's Signature: _____

[Signature]
Economic Redevelopment Director

8/5/15
Date



APPROVED AS TO FORM:

[Signature] *8/5/2015*
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Kimberly Murray, Economic Redevelopment Director
Date: August 11, 2015
Re: A Resolution to Authorize the Extension of the Governor's Development Opportunity Fund ("GOF") Performance Agreement Between the City of Winchester, Virginia, and Rubbermaid Commercial Products LLC, And the Economic Development Authority of the City of Winchester to June 30, 2016

THE ISSUE: Pursuant to the Performance Agreement attached, in exchange for the GOF Grant proceeds, Rubbermaid agreed to make a capital investment in the amount of \$58,251,104 and to create and maintain 71 new jobs paying an average annual wage of \$73,732 at its facilities within the City of Winchester by June 30, 2015. They have exceeded the capital investment amount by \$7,438,896 or 13% for a total of \$65,690,000 as of December 31, 2014, but have not created the new jobs required or met the net minimum required jobs of 15 new jobs paying an average annual wage of \$42,651. Rubbermaid reported the total capital expenditure between City and County investments to be \$90,980,680. They have asked the Virginia Economic Development Partnership (VEDP) and the Winchester City Council to grant an extension to June 30, 2016, to meet at least this minimum requirement of 15 jobs.

RELATIONSHIP TO STRATEGIC PLAN: Will assist in the City's desire to encourage sustainable economic growth and partnerships through business and workforce development.

BACKGROUND: The City Manager and Economic Redevelopment Director met with representatives from Newell Rubbermaid, including the local Director of Operations, and VEDP staff on July 9, 2015, to discuss their request, tour the facility, and understand the capital investments made to date as well as their workforce challenges including an explanation of their corporate restructure and the loss of management positions in Winchester in 2013. Attached is a letter dated July 24, 2015, from Mr. Arthur Garcia, representing Newell Rubbermaid Inc. to further explain recent restructuring efforts and growth since 2000 from 766,000 square feet supplying products to the US market to now Newell Rubbermaid has achieved a marketing and distribution center occupying 1,544,000 square feet forecasting to supply over \$1 billion in product to the global marketplace. In a letter dated July 13, 2015, from Ms. Katherine Hart, VEDP, they explain their position that with the City Council's approval, VEDP will extend the Performance Date to June 30, 2016. If Rubbermaid has failed to achieve the statutory minimum requirement for new jobs by June 30, 2016, the entire \$300,000 GOF Grant and the \$300,000 Locality Grant paid to date, must be repaid by the Company no later than September 30, 2016. If Rubbermaid has met the statutory minimum requirement for new jobs by June 30, 2016, the Company will repay only a portion of the GOF Grant allocated to new jobs based on the shortfall from 71 new jobs but the City will need to distribute the remaining Locality Grant funds (\$400,000) to Rubbermaid.

BUDGET IMPACT: The City paid \$300,000 of the \$700,000 Locality Grant plus the \$300,000 from the GOF Grant (State funds) in 2012. The GOF Agreement calls for an additional \$400,000 of the Locality Grant (City funds) due from the City to Rubbermaid Commercial

Products, LLC. totaling an investment by the City of Winchester of \$700,000 once the capital investment benchmarks are met. The City has not yet paid out the remainder of the approved City incentive. If however, the Company fails to meet the minimum number of jobs (15) by the extended date if granted, it shall constitute a breach of the Agreement and the entire amount of both Grants (the GOF and the Locality Grant) must be repaid.

OPTIONS: Council may approve the resolution to support extending the Performance Date to June 30, 2016, decline the resolution, or provide comments to the Virginia Economic Development Partnership if support is not given.

RECOMMENDATIONS: City Staff recommends the approval of the attached Resolution to support extending the Performance Date to June 30, 2016. With \$65,690,000 of capital investment made to date, as well as 214 temporary employees working full-time shifts not currently counted (60 of those positions Rubbermaid is working to transform to full-time permanent jobs this year,) it is an opportunity to continue to support the second largest employer in the City of Winchester, which currently employs 789 people.

**A RESOLUTION TO AUTHORIZE THE EXTENSION OF THE GOVERNOR'S
DEVELOPMENT OPPORTUNITY FUND ("GOF") PERFORMANCE
AGREEMENT BETWEEN THE CITY OF WINCHESTER, VIRGINIA, AND
RUBBERMAID COMMERCIAL PRODUCTS LLC, AND THE ECONOMIC
DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER TO JUNE 30,
2016**

WHEREAS, the Winchester Common Council desires to create a positive business environment and encourages sustainable economic growth and partnerships through business and workforce development;

WHEREAS, pursuant to the Governor's Development Opportunity Fund ("GOF") Performance Agreement between the City of Winchester, Virginia (the "City"), the Economic Development Authority of the City of Winchester (the "Authority"), and Rubbermaid Commercial Products LLC ("Rubbermaid" or the "Company"), dated May 9, 2012 (the "Performance Agreement"), the Commonwealth of Virginia made a \$300,000 GOF Grant to the City for the benefit of Rubbermaid;

WHEREAS, pursuant to the Performance Agreement, in exchange for the GOF Grant proceeds, Rubbermaid agreed to make Capital Investment in the amount of \$58,251,104 and to create and maintain 71 new jobs paying an average annual wage of \$73,732 at its facilities, all as of the June 30, 2015 Performance Date. The capitalized terms are defined in the Performance Agreement which is attached to this resolution signed in May 2012, titled Governor's Development Opportunity Fund - Winchester Performance Grant - Rubbermaid Performance Agreement;

WHEREAS, in the same agreement, the City of Winchester agreed to providing a Locality Grant in the amount of \$700,000 to be paid in three installments of which \$300,000 was dispersed in 2012 through the Authority as an inducement to the Company to achieve capital investment and job creation targets, and is contingent on the Company meeting capital investment expenditures of at least \$53,505,271 and meet the net minimum required jobs of 15 new jobs paying an average annual wage of \$42,651 to receive entire amount;

WHEREAS, Rubbermaid has indicated that the Company has made \$65,690,000 in capital investment within the City of Winchester, but that the Company has not created and maintained the requisite number of new jobs and Rubbermaid also has not achieved the statutory minimum requirement for a GOF Grant of 15 new jobs paying an average annual wage of \$42,651;

WHEREAS, based on the amount of capital investment and the Company's plans for continued growth, the Virginia Economic Development Partnership ("VEDP") would like to reach an accommodation with Rubbermaid that will provide the Company with more time to create and maintain new jobs and to achieve at least the statutory minimum requirement for a GOF Grant; and

WHEREAS, VEDP is willing to extend the Performance Date to June 30, 2016 and requests the Winchester Common Council's support for the extension.

NOW THEREFORE BE IT RESOLVED, that the Winchester Common Council

acknowledges the significant capital investment in the last three years and the lack of projected job growth and loss of jobs has resulted in failing to meet even the statutory minimum 15 jobs that is required of the Performance Agreement;

BE IT FURTHER RESOLVED, that the adoption of this Resolution shall allow additional time to meet the minimum 15 jobs and shall serve as approval of the City of Winchester's agreement to the extension of the Performance Date to June 30, 2016; and

BE IT FURTHER RESOLVED, that the City Manager or her designee is authorized to send written notice of support to the Authority and VEDP and provide oversight over the progress of Rubbermaid's compliance with the Performance Agreement minimum requirements over the next year.

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

WINCHESTER PERFORMANCE GRANT

RUBBERMAID PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this 9th day of May, 2012, by and among the **CITY OF WINCHESTER, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **RUBBERMAID COMMERCIAL PRODUCTS LLC** (the "Company"), a Delaware limited liability company authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$300,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to expand and improve a manufacturing facility in the Locality and to purchase and improve a logistics facility in the County of Frederick (the "County"), thereby making a significant Capital Investment, as hereinafter defined, and creating a significant number of New Jobs, as hereinafter defined;

WHEREAS, the Locality has elected to provide a grant to the Company in the amount of \$700,000 (the "Locality Grant") for the purpose of inducing the Company to expand and improve the manufacturing facility and to purchase and improve the logistics facility (together, the "Facilities"), thereby making a significant Capital Investment and creating a significant number of New Jobs;

WHEREAS, the Locality is willing to provide to the Authority the proceeds of the GOF Grant and funds necessary to make the Locality Grant (together, the "Grants"), with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the Grants, the use of the proceeds of the Grants, the obligations of the Company regarding Capital Investment and New Job creation, and the repayment by the Company of all or part of the Grants under certain circumstances;

WHEREAS, the expansion, improvement, and operation of the manufacturing facility in the Locality and the purchase, improvement and operation of the logistics facility in the County, will entail a capital expenditure of approximately \$67,251,104, of which approximately \$53,505,271 will be invested in the Locality and \$13,745,833 will be invested in the County;

WHEREAS, the development and operation of the Facilities will further entail the creation of 71 New Jobs at the Facilities, of which approximately 66 will be created in the Locality and approximately 5 will be created in the County; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the Grants:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by the Company on or after July 1, 2011, in taxable real property, taxable tangible personal property, or both, at the Facilities, excluding the purchase of land and existing real property improvements. The expected net capital expenditure of \$58,251,104, reflecting the aggregate expected capital expenditure of \$67,251,104 less the \$9,000,000 cost of the purchase of land and existing real property improvements, is referred to in this Agreement as the “Capital Investment.”

“Maintain” means that the New Jobs created pursuant to the Grants will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to temporary reductions in the Company’s employment levels in connection with recruitment for open positions or strikes and other work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facilities for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$73,732. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 1,027 full-time jobs at the manufacturing facility in the Locality as described in the letter from the Company to VEDP dated November 21, 2011.

“Performance Date” means June 30, 2015. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written

notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make Capital Investments at the Facilities of at least \$58,251,104 and to create and Maintain at least 71 New Jobs at the Facilities, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets.

The Company will develop and operate the Facilities in the Locality and the County, make a Capital Investment of at least \$58,251,104, and create and Maintain at least 71 New Jobs at the Facilities, all as of the Performance Date. As noted in Section 5(c), any repayment that may be due with respect to the Locality Grant will be based upon the Company making a Capital Investment in the Locality (not including Capital Investment in the County) of at least \$53,505,271.

The average annual wage of the New Jobs of at least \$73,732 is more than the prevailing average annual wage in the Locality and the County of \$42,651 and \$38,533, respectively. The Locality is a high-unemployment locality, with an unemployment rate for 2010, which is the last year for which such data is available, of 7.2% as compared to the 2010 statewide unemployment rate of 6.9%. The Locality is a high-poverty locality, with a poverty rate for 2010, which is the last year for which such data is available, of 19.3% as compared to the 2010 statewide poverty rate of 11.1%. The County is a high-unemployment locality with an unemployment rate for 2010 of 7.0%.

Section 3. Disbursement of Grants.

(a) *GOF Grant:* The GOF Grant in the amount of \$300,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Authority. Within 30 days of its receipt of the GOF Grant proceeds, the Authority will disburse the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facilities. The Company will use the GOF Grant proceeds for construction or build-out of buildings, as permitted by Section 2.2-115(D) of the Virginia Code.

By no later than June 30, 2012, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by June 30, 2012, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

(b) *Locality Grant:* The Locality Grant in the aggregate amount of \$700,000 will be paid by the Locality to the Authority in three installments. The first installment of \$300,000 will be paid at the same time as the proceeds of the GOF Grant are paid. The second installment of the

Locality Grant of \$200,000 will be paid when the Company has demonstrated to the Locality and the Authority that it has made Capital Investments of at least \$37,435,690 (which is 70% of the expected Capital Investment in the Locality of \$53,505,271). The third installment of the Locality Grant of \$200,000 will be paid when the Company has demonstrated to the Locality and the Authority that it has made Capital Investments of at least \$48,154,744 (which is 90% of the expected Capital Investment in the Locality of \$53,505,271). Within 30 days of its receipt of the Locality Grant proceeds, the Authority will disburse the Locality Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facilities. The Company may use the Locality Grant proceeds for any lawful purpose. The Locality, the Authority and the Company acknowledge and agree that the obligation to fund the Locality Grant is subject to future appropriation by the Locality’s City Council and by appropriate action by the Authority.

Section 4. Break-Even Point; State and Local Incentives.

VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facilities with the Commonwealth’s expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facilities, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
GOF Grant	\$ 300,000
Virginia Investment Partnership (VIP) Grant	600,000
Virginia Jobs Investment Program (“VJIP”) (Estimated)	63,900
Virginia Jobs Investment Program Retraining (“VJIP”) (Estimated)	80,000
Transportation Partnership Opportunity Fund Grant (“TPOF”)	800,000

The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Locality Grant	\$ 700,000

The proceeds of the GOF Grant and the Locality Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The VIP Grant proceeds may be used by the Company for any lawful purpose.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$1,500,000 in the Facilities and create and Maintain at least 15 New Jobs at the Facilities in order to be eligible for the GOF Grant. Failure by the Company to meet either of these eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire amount of both Grants must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Requirements are Met / GOF Grant:* For purposes of repayment, the GOF Grant is to be allocated as 50% (\$150,000) for the Company's Capital Investment Target and 50% (\$150,000) for its New Jobs Target. If the Company has met at least ninety percent (90%) of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the GOF Grant. If the Company has not met at least ninety percent (90%) of either or both of its Targets, the Company shall repay to the Authority that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$46,600,883 and only 50 New Jobs have been created and Maintained, the Company shall repay to the Authority twenty percent (20%) of the moneys allocated to the Capital Investment Target (\$30,000) and thirty percent (30%) of the moneys allocated to the New Jobs Target (\$45,000).

(c) *If Statutory Minimum Requirements are Met / Locality Grant:* For purposes of repayment, the Locality Grant is to be allocated as 100% (\$700,000 for the Locality Grant -- or 100% of the installments paid, if less than \$700,000) for the Company's expected Capital Investment in the Locality of \$53,505,271. If the Company has met at least ninety percent (90%) of the expected Capital Investment in the Locality at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the Locality Grant. If the Company has not met at least ninety percent (90%) of the expected Capital Investment in the Locality, the Company shall repay to the Authority that part of the Locality Grant that is proportional to the shortfall. For example, if at the Performance Date, the Capital Investment in the Locality is only \$42,804,217, the Company shall repay to the Authority twenty percent (20%) of the Locality Grant (\$140,000 – or 20% of the installments paid, if less than \$700,000).

(d) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire amounts of the GOF Grant and the Locality Grant to the Authority. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facilities by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the Grants.

(e) *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within thirty days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality. Any such moneys related to the GOF Grant shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets, including a breakdown of the Capital Investments made in the Locality and in the County. Such progress reports will be provided annually, starting at September 1, 2012 and covering the period through the prior June 30, and at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Section 7. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

Rubbermaid Commercial Products LLC
3124 Valley Avenue
Winchester, Virginia 22610
Attention: Vice President, Finance

with a copy to:

Newell Rubbermaid Inc.
Legal Department
3 Glenlake Parkway
Atlanta, Georgia 30328
Attention: General Counsel

if to the Locality, to:

City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, Virginia 22601
Attention: City Manager

with a copy to:

City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, Virginia 22601
Attention: City Attorney

if to the Authority, to:

Economic Development Authority
of the City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, VA. 22601

with a copy to:

City of Winchester
Rouss City Hall
15 North Cameron St.
Winchester, Virginia 22601
Attention: Director of Economic

Attention: Chair

Redevelopment

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attention: President and CEO

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the Grants and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Winchester, and such litigation shall be brought only in such court.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

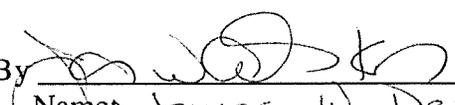
[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

CITY OF WINCHESTER, VIRGINIA

By 
Name: Dale Iman
Title: City Manager
Date: 5-11-17

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
WINCHESTER**

By 
Name: James W. Deskins
Title: Executive Director
Date: 5/10/12

**RUBBERMAID COMMERCIAL
PRODUCTS LLC**

By _____
Name: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

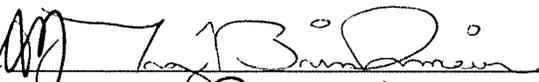
CITY OF WINCHESTER, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
WINCHESTER**

By _____
Name: _____
Title: _____
Date: _____

**RUBBERMAID COMMERCIAL
PRODUCTS LLC**

By  _____
Name: Troy Brinkmeyer
Title: Assistant Treasurer
Date: May 14, 2012



Arthur Garcia

Newell Rubbermaid Inc.
29 East Stephenson Street
Freeport, IL 61032

July 24, 2015

VIA FEDERAL EXPRESS

Kimberly L. Murray, AICP
Economic Redevelopment Director
City of Winchester
33 East Boscawen Street, Suite 101
Winchester, Virginia 22601

Re: *Governor's Development Opportunity Fund Performance Agreement*

Dear Ms. Murray:

I write on behalf of Rubbermaid Commercial Products, LLC regarding the Governor's Development Opportunity Fund Performance Agreement dated May 9, 2012, between the City of Winchester, the Economic Development Authority of the City of Winchester and Rubbermaid (the "Performance Agreement"). I believe you received a letter dated July 13, 2015, from the Virginia Economic Development Partnership requesting the City's concurrence with extending the Performance Agreement Performance Date to June 30, 2016. Set forth below is additional and supporting information I ask that the City consider while reviewing the request for an extension.

In the year 2000, the financial performance of Newell Rubbermaid Inc. (the "Company"), the parent of Rubbermaid, was well below the Company's forecasts and expectations. The Company's stock price fell below half of its historical high, and the adverse impact of global competition in the Company's markets was becoming evident. It quickly became apparent that in order for the Company to survive, let alone prosper, a number of restructuring measures would need to be taken. The Board changed the company's senior management and embarked on a series of restructurings that would ultimately cost the Company well over a billion dollars.

The Company's early restructuring efforts focused on redeploying supply chain assets to more competitively serve the global marketplace. These efforts resulted, in part, in the downsizing of certain production in the United States. Late in the first decade, the Company began planning to expand manufacturing facilities in the United States that were seen as globally competitive producers of product. The Winchester facility met these criteria and was viewed as a strategic growth opportunity in the Company's plans. The Company targeted the Winchester plant for expansion.

In 2011, the Company approached the Commonwealth seeking opportunities to partner in developing a state of the art manufacturing hub in Winchester. The Company envisioned

making Winchester an anchor facility for Rubbermaid manufacturing and distribution. The Commonwealth and the Development Authorities in the City and County were amenable. The parties negotiated and signed the Performance Agreement in 2011 and 2012.

In the Performance Agreement, Rubbermaid pledged to increase full time permanent positions by 71 jobs. Rubbermaid reported that 1,027 positions were located in Virginia. The Company now believes there were two issues with employment numbers that were used to establish this baseline figure. First, the number contained 90 sales positions for employees that were associated with Winchester in certain employee databases but actually dispersed throughout the United States. Second, of the remaining 937 positions, 139 were temporary employees that worked full shifts. Neither of these groups should have been counted in the baseline number. Thus, the appropriate baseline employment number was 798 full time permanent employees.

The Performance Agreement also requires that the salaries for the 71 new jobs average approximately \$73,000. This amount far exceeds the average salary typically associated with a manufacturing center and requires some explanation. In the year 2000, the Company's individual businesses essentially operated as self-contained silos, with the business's management housed at the principal manufacturing site of each business. The subsequent restructurings involved aggregating management of many of the businesses in the Company's World Headquarters in Atlanta. There were also group management hubs in Charlotte, North Carolina and Oakbrook, Illinois. In 2011, when Rubbermaid was negotiating the Performance Agreement, the Company did not intend to move Rubbermaid's management from Winchester. Therefore, business management positions were included in the baseline jobs figure. This is why the average salary in the Performance Agreement is well above the average of a typical manufacturing center.

In and after the year 2011, a third senior management change was made at the Company. The new chief executive officer continued with the Company's restructuring efforts, but at a higher amplitude. One result of the CEO's renewed emphasis on structural efficiency was to shift the individual business's operating structures. The new structure focused on building and maintaining centers of manufacturing excellence separate and apart from management of the businesses. As a consequence, in December of 2013 it was announced that Rubbermaid's business management would relocate to Charlotte, North Carolina, with Winchester becoming a global center of manufacturing excellence.

In the Performance Agreement, Rubbermaid also pledged to spend capital in the amount of approximately \$67,000,000. As a manufacturing center of excellence, the Winchester facilities have been repeatedly expanded and modernized. Rubbermaid has spent over \$90,000,000 of new capital on the facilities in the past three years alone – far exceeding the capital expenditure targets set forth in the Performance Agreement. Rubbermaid has also brought an entirely new line of products into the plant with attendant expansion of the distribution facility. In 2000, Winchester was a single plant of 766,000 square feet supplying strategically targeted products predominantly to the United States market. Presently, Winchester is a manufacturing and distribution center of excellence, occupying 1,544,000 square feet and is forecast to supply over \$1 billion in product to the global marketplace.

Rubbermaid is proud of the capital investments it has made in Winchester. Nevertheless, at present the number of full time permanent positions at 789 does not comply with the requirements of the Agreement. The average salary of \$53,515 is more closely aligned with a manufacturing center, although well above the statutory requirement of \$42,051 in the City and \$38,533 in the County.

The Company is confident that with additional time, employment will reach a minimum of 813 full time permanent positions as required in the Performance Agreement. As of the date of this letter, there are 214 temporary employees that work full shifts in the facilities. There are outstanding open position requests that are set to transform 60 of these positions to full time permanent jobs. This figure is well in excess of the 24 positions needed to meet the agreement's minimum requirements. Filling Rubbermaid's open positions has taken longer than anticipated as unemployment is at a five-year low in Winchester. Rubbermaid intends to do what is required to fill at a minimum 24 of these outstanding requisitions by June 30, 2016, and strives to do so much sooner.

Rubbermaid is pleased to be a significant and growing part of the Winchester Community, and asks that you provide your agreement to the proposed extension as requested in Katharine Hart's letter dated July 13, 2015. I, along with other Company representatives, will be in attendance at the Council meeting on August 11 to answer any questions the Council may have.

I look forward to seeing you at the meeting and thank you in advance for your time and consideration.

Sincerely,



Arthur C. Garcia, Jr.

cc: Ms. Katherine Hart (*via email*)
Mr. Mark W. Johnson (*via email*)
Mr. Dale L. Matschullat (*via email*)

July 13, 2015

Kimberly L. Murray, AICP
Economic Redevelopment Director
City of Winchester
33 East Boscawen Street, Suite 101
Winchester, VA 22601

RE: Governor's Development Opportunity Fund Performance Agreement among the City of Winchester, Virginia, Rubbermaid Commercial Products LLC, and the Economic Development Authority of the City of Winchester

Dear Ms. Murray:

Pursuant to the Governor's Development Opportunity Fund ("GOF") Performance Agreement among the City of Winchester, Virginia (the "City"), the Economic Development Authority of the City of Winchester (the "Authority"), and Rubbermaid Commercial Products LLC ("Rubbermaid" or the "Company"), dated May 9, 2012 (the "Performance Agreement"), the Commonwealth of Virginia made a \$300,000 GOF Grant to the City for the benefit of Rubbermaid.

Pursuant to the Performance Agreement, in exchange for the GOF Grant proceeds, Rubbermaid agreed to make Capital Investment in the amount of \$58,251,104 and to create and Maintain 71 New Jobs paying an average annual wage of \$73,732 at its Facilities, all as of the June 30, 2015 Performance Date. The capitalized terms are defined in the Performance Agreement.

Rubbermaid has indicated that the Company has made \$90,980,680 in Capital Investment, but that the Company has not created and Maintained the requisite number of New Jobs. Rubbermaid also has not achieved the statutory minimum requirement for a GOF Grant of 15 New Jobs paying an average annual wage of \$42,651 in the City and \$38,533 in the County of Frederick, Virginia.

Based on the amount of Capital Investment and the Company's plans for continued growth, the Virginia Economic Development Partnership ("VEDP") would like to reach an accommodation with Rubbermaid that will provide the Company with more time to create and Maintain New Jobs and to achieve at least the statutory minimum requirement for a GOF Grant.

VEDP is willing to extend the Performance Date to June 30, 2016.

If Rubbermaid has failed to achieve the statutory minimum requirement for New Jobs by June 30, 2016, the entire \$300,000 GOF Grant must be repaid by the Company no later than

Kimberly L. Murray
July 15, 2015
Page 2

September 30, 2016. If Rubbermaid has met the statutory minimum requirement for New Jobs by June 30, 2016, the Company will repay a portion of the GOF Grant allocated to New Jobs based on the shortfall from 71 New Jobs. The repayment amount will be calculated in the manner described in Section 4(b) of the Performance Agreement and must be made no later than September 30, 2016.

If the City is in agreement with an extension of the Performance Date to June 30, 2016, in accordance with the Performance Agreement, please send written notice to the Authority, the Company, and VEDP.

This letter relates solely to the GOF Grant and not to any other grant made to Rubbermaid by VEDP or any other governmental entity.

Sincerely,

A handwritten signature in blue ink that reads "Katharine A. Hart". The signature is written in a cursive style.

Katharine A. Hart
Assistant General Counsel

cc: Dale L. Matschullat
Arthur C. Garcia, Jr.
Mark W. Johnson