

Introduced by: Mr. Bell
Date of introduction: November 26, 2019

ORDINANCE NO. 19-115

TO AMEND CHAPTER 14 OF THE *NEW CASTLE COUNTY CODE* TO PROVIDE A FINITE TAX EXEMPTION FOR DOT FOODS, INC., TAX PARCEL NO. 12-012.000-60, 301 AMERICAN BOULEVARD, BEAR, DELAWARE, IN SUPPORT OF ECONOMIC DEVELOPMENT

WHEREAS, Article VIII, Section 1 of the *Delaware Constitution of 1897* authorizes New Castle County to exempt from County taxation such property as, in its opinion, will best promote the public welfare; and

WHEREAS, Dot Foods, Inc. (“Dot Foods”) is an Illinois-based, family-owned redistributor of food products throughout the United States, offering over 118,000 products to its customers; and

WHEREAS, on September 25, 2018, this Council passed Resolution No. 18-155, a resolution in support of a future Ordinance to provide a finite tax exemption for Dot Foods, in support of economic development in New Castle County; and

WHEREAS, on July 19, 2019, Dot Foods, through a wholly-owned subsidiary, Dot Delaware 2018 LLC, purchased 301 American Boulevard, Bear, Delaware, identified as tax parcel number 12-012.000-60 (the “Property”); and

WHEREAS, Dot Foods intends to complete construction of an approximate 190,000 square foot redistribution center on the Property in the first quarter of calendar year 2020; and

WHEREAS, Dot Foods’ purchase and renovation of the Property will create job opportunities and generally benefit the economy of New Castle County; and

WHEREAS, pursuant to that certain Strategic Grant Agreement dated January 22, 2019 (attached hereto as Exhibit A, the “State Grant Agreement”), by and between the Delaware Economic Development Authority (the “Authority”) and Dot Foods, the State of Delaware will provide (a) up to \$750,000 in capital expenditure grant funding or a three percent (3%) match of qualified expenditures up to \$25,000,000 and (b) up to \$352,000 in performance based grant funding to assist Dot Foods in the hiring of new full-time employees for its redistribution center; and

WHEREAS, pursuant to paragraph 5(b) of the State Grant Agreement, Dot Foods is obligated to make reasonable commercial efforts to employ 201 new full-time employees by December 31, 2022; and

WHEREAS, the Government of New Castle County recognizes the substantial costs for the planned capital expenditures for construction of the redistribution center, and costs associated with the hiring of new full-time employees; and

WHEREAS, the Government of New Castle County seeks to assist Dot Foods in creating 201 new full-time positions through a reduction of its County Property tax burden for a period of five years, or up to a maximum cumulative amount of \$150,000, whichever first occurs.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 14 (“Finance and Taxation”), Article 6 (“Exemption from Real Property Taxation”), Division 14.06.1200 (“Special exemptions”), is hereby amended by the addition of the underscored language as set forth below:

Sec. 14.06.1203. – Special exemption for new or renovated commercial or manufacturing project.

1. 301 American Boulevard, Bear, Delaware, identified as tax parcel number 12-012.000-60 (the “Property”), shall be exempt from County taxation on any increase in assessed valuation of the Property attributable to new construction or renovation of the Property. The exemption shall commence on July 1, 2020 and shall continue for a period of five years or until a total of One-Hundred Fifty Thousand Dollars (\$150,000.00) in property taxes has been exempted (the “Exemption Period”), whichever first occurs.
2. Nothing in this Section shall prevent the County from increasing the taxable assessments for the land and building values to reflect improvements made to the Property during the Exemption Period.
3. Nothing in this Section shall entitle Dot Delaware 2018 LLC (“Dot Foods”), to an exemption from County sewer service charges, ditch taxes, or taxes imposed by any school district.
4. In any County fiscal year in which Dot Foods sells or leases any part of the Property to any party or entity not affiliated with Dot Foods, the otherwise applicable exemption shall terminate and be of no further force or effect as of the date of sale or lease.
5. In any County fiscal year in which Dot Foods files for bankruptcy protection, or consents to or requests the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, or takes advantage of any insolvency law, or submits to an answer admitting the material allegations of a petition for bankruptcy, reorganization or insolvency proceeding, or has an involuntary petition for bankruptcy filed on its behalf, the otherwise applicable exemption shall terminate and be of no further force or effect as of the date of the action.
6. In any County fiscal year in which Dot Foods fails timely to pay all County sewer service charges or annual school taxes, unless such charges and taxes are being contested as allowed by applicable law, it shall forfeit the otherwise applicable County tax exemption for the following County fiscal year.
7. If Dot Foods does not create 201 new full-time positions by May 30, 2025, it shall forfeit the County tax exemption in its entirety and shall be obligated to pay any and all amounts previously exempted through this special exemption. Dot Foods shall comply with all requests by the County that are necessary to verify creation of the 201 new full-time positions, including, but not limited to, copies of any New Full-Time Employee Performance Draw Request (as defined in the Agreement) submitted to the State to obtain a disbursement of the performance grant. The May 30, 2025 deadline may be amended by subsequent ordinance.
8. This property tax exemption shall sunset no later than June 30, 2025.

Section 2. This ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive, or as otherwise set forth in 9 *Del. C.* Section 1156.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: This Ordinance provides for a five (5) year or One Hundred Fifty Thousand Dollar (\$150,000) exemption from County taxes (whichever comes first) for any increase in assessed valuation of the property located at 301 American Boulevard, Bear, Delaware, (the "Property"), tax parcel number 12-012.000-60, that is attributable to new construction or renovation of the Property. This economic development incentive for Dot Foods, Inc. ("Dot Foods") is contingent on the creation of 201 new full-time positions by May 30, 2025.

FISCAL NOTE: This ordinance, if adopted, will result in a County property tax exemption for a period of five (5) years, up to a maximum cumulative amount of One Hundred Fifty Thousand Dollars (\$150,000), for any increase in the assessed valuation of the Property that is attributable to any new construction or renovation of the Property. If Dot Foods does not create 201 new full-time positions by May 30, 2025, it shall forfeit the entire exemption and shall be responsible for paying previously exempted amounts.

DELAWARE STRATEGIC FUND GRANT AGREEMENT

THIS GRANT AGREEMENT (the "Agreement") is made as of the 22nd day of January, 2019, by and between The Delaware Economic Development Authority (the "Authority"), a body corporate and politic constituted as an instrumentality of the State of Delaware (the "State") and Dot Foods, Inc. and Dot Transportation, Inc. (the "Grantee").

WITNESSETH:

WHEREAS, Grantee has made an application dated August 12, 2018, ("Application") to The Delaware Economic Development Authority (the "Authority") for a grant under the Delaware Strategic Fund Program, 29 *Del. C.* §§ 8727A – 8729A (the "Program"), in an amount not to exceed Three Hundred Fifty-Two Thousand Dollars (\$352,000.00) for performance based funding and capital expenditure funding up to Seven Hundred Fifty Thousand Dollars (\$750,000.00) or a three percent (3%) match of qualified expenditures up to Twenty-Five Million Dollars (\$25,000,000.00) for a total grant of One Million One Hundred Two Thousand Dollars (\$1,102,000.00). The proceeds will be used to construct a new redistribution center and hire employees in Bear, Delaware (the "Project"), as more completely described in the Application and the attachments thereto.

WHEREAS, pursuant to 29 *Del. C.* § 8755A(d) the Council on Development Finance (the "Council") held a public hearing with respect to the Application on August 27, 2018 and recommended to the Chairperson of the Authority the approval of the Application and the making of a grant under the Program in an amount not to exceed Three Hundred Fifty-Two Thousand Dollars (\$352,000.00) for performance based funding and capital expenditure funding up to Seven Hundred Fifty Thousand Dollars (\$750,000.00) (the "Grant").

WHEREAS, the Authority has considered (i) the Application under the Program, (ii) the criteria for the amount and type of assistance that are set forth in the statutes governing the Program, including 29 *Del. C.* § 8729A(d), and the provision of financial assistance by the Authority and in the Authority's Regulation No. 5 – Procedures Governing the Delaware Strategic Fund, 1 *Del. Admin.* § 402 ("Regulation No. 5") and (iii) the recommendation of the Council.

WHEREAS, the Authority has adopted a resolution dated September 15, 2018, under which the Authority (i) made the findings required by 29 *Del. C.* § 8755A and by the Authority's Regulation No. 5 and (ii) resolved to make the Grant to the Grantee in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement, terms defined in the preamble and recitals hereof shall have the meanings set forth therein, and the following terms shall have the meanings set forth below:
 - (a) "Allowable Capex Costs" means the amount equal to documented capital expenditures by the Grantee in connection with the Project and approved by the Authority which shall not be unreasonably withheld; *provided, however*, that Allowable Capex Costs shall not include any fees, taxes, charges or assessments paid to any governmental body, Grantee's wages and associated employee labor costs associated with the Project or Grantee's employee training costs. Grantee may submit a draw request for Allowable Capex Costs for improvements.
 - (b) "Automatic Event Defaults" or "Non-Curable Defaults" shall have the meaning set forth in Section 10 herein.
 - (c) "Annual Report" means a written report containing Grantee's employment levels dated as of December 31, 2018. Such report shall be submitted to the Authority no later than January 30, 2019. These Annual Reports are due, on a yearly basis through December 31, 2026, as set forth in Section 12(a) herein.
 - (d) "Bankruptcy Event Default" shall have the meaning set forth in Section 10(a)(ii) herein.
 - (e) "Bankruptcy Event Default Payment" shall have the meaning set forth in Section 11(d) herein.
 - (f) "Baseline Employment Number" means, at any time, Zero (0) Full-Time Employees.
 - (g) "Cessation Event Default" shall have the meaning set forth in Section 10(a)(i) herein.
 - (h) "Cessation Event Default Payment" shall have the meaning set forth in Section 11(a) herein.
 - (i) "Contract Worker" means persons engaged by Grantee through third parties and persons who are engaged as independent contractors of Grantee providing work or services at the Project facility.
 - (j) "Cure Report" means a written report provided by the Grantee to the Authority, signed by an officer of the Grantee authorized to bind the Grantee, setting forth

the proposed plan by Grantee to cure any default hereunder, as referenced in Section 8.

- (k) "DSB" means the Delaware Division of Small Business, a Division in the Delaware Department of the State.
- (l) "Employment Benchmark Measurement Number" means Zero (0) Full-Time Employees plus the number of New Full-Time Employees, if any, for which a Draw Request is made pursuant to Section 5(b) and 6(b) herein.
- (m) "Employment Benchmark Measurement Number Default" means in any year during the Reporting Period, the number of Full-Time Employees reported on the Annual Report is less than the Employment Benchmark Measurement Number in the prior Reporting Year.
- (n) "Employment Benchmark Measurement Number Default Payment" shall have the meaning set forth in Section 11(b) herein.
- (o) "Full-Time Employee" means any employee of the Grantee whose 1) compensation is based on a work week of at least thirty-five (35) hours or who is a salaried or hourly employee and 2) whose position is based in the State.
- (p) "GAAP" means generally accepted accounting principles set forth in the Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and in statements of the Financial Accounting Standards Board and in such other statements by such other entity as the Authority may reasonably approve, which are applicable in the circumstances as of the date in question; and such principles observed in a current period shall be comparable in all material respects to those applied in a preceding period. Except as otherwise provided herein, financial and accounting terms used in the foregoing definitions or elsewhere in this Agreement, shall be defined in accordance with GAAP.
- (q) "Government Funding Certification" shall have the meaning described in Section 15 herein.
- (r) "New Full-Time Employee" means a Full-Time Employee of the Grantee who (i) has been employed by the Grantee in the State for at least ninety (90) consecutive days, and was first employed after February 19, 2018. The salary requirements for New Full-Time Employees created by the Agreement are incorporated herein in Exhibit E.
- (s) "Reporting Default" means the failure of the Grantee to provide the Authority with any report required under this Agreement within the time provided herein.

- (t) "Reporting Default Payment" means a payment from the Grantee to the Authority in an amount equal to all funds actually disbursed to the Grantee as a result of not meeting the Reporting Requirement as referenced in Section 11(c).
 - (u) "Reporting Period" means the period from January 30, 2019, through and including January 30, 2026.
 - (v) "Reporting Year" means the period from January 1 through December 31 each year between 2018 and 2026.
 - (w) "Reporting Requirement" shall have the meaning defined in Section 12 in its entirety.
 - (x) "Salary" means the annual compensation (exclusive of non-cash benefits or other non-cash remuneration of any kind, except that cash contributions to an Employee's 401(k) shall not be considered compensation) paid to a Full-Time Employee or a qualified New Full Time Employee as defined above.
 - (y) "Salary/Employment Table" shall mean the exhibit attached as Exhibit E and made a part hereto.
2. Representations and Warranties of the Authority. The Authority makes the following representations and warranties:
- (a) The Authority is a body corporate and politic and is constituted an instrumentality of the State.
 - (b) The Authority has full power and authority to enter into, execute, deliver and perform this Agreement in accordance with its terms.
 - (c) The Director of DSB, in his/her capacity as Chairperson of the Authority, is duly authorized to execute this Agreement on behalf of the Authority and has the legal capacity to do so.
 - (d) This Agreement constitutes a legal, valid and binding agreement of the Authority enforceable against the Authority in accordance with its terms.
 - (e) The observance and performance by the Authority of its obligations hereunder will not violate or conflict with any provisions of the laws of the State.
3. Representations and Warranties of the Grantee. The Grantee makes the following representations and warranties:
- (a) The Grantee is an Illinois Corporation and Delaware Corporation duly organized, validly existing and in good standing under the laws of Delaware.

- (b) The Grantee has full Corporate power and authority to enter into, execute, deliver and perform this Agreement in accordance with its terms and to conduct its activities in the State as they are now being conducted and as they are contemplated in connection with the Project.
 - (c) The individual, or individuals, executing this Agreement on behalf of the Grantee has, or have, been duly authorized to execute the Agreement and has, or have, the legal capacity to do so.
 - (d) This Agreement constitutes a legal, valid, and binding agreement of the Grantee enforceable against the Grantee in accordance with its terms.
 - (e) The observance and performance by the Grantee of its obligations hereunder will not violate or conflict with the certificate of incorporation and bylaws of the Grantee, any material provision of any other material agreement or judgment to which the Grantee is a party or by which it, or any of its property, is bound, or the laws of Delaware.
 - (f) The Federal Taxpayer Identification Number of the Grantee is 37-1872672 and 37-1260828.
 - (g) The Grantee possesses or will possess all material licenses and permits required by federal, State or local laws enabling it to own its properties and conduct its activities in the State.
 - (h) Grantee certifies that the information reported herein is true, accurate and complete to the best of Grantee's knowledge based upon reasonable diligence of individuals with material knowledge of the Project. Grantee understands that these representations are made in support of claims for government funds.
4. Term. Unless sooner terminated, this Agreement shall terminate one year after the end of the Reporting Period.
5. Obligations of Grantee.
- (a) Grantee will make reasonable commercial efforts to construct facilities and employ Full-Time Employees and Contract Workers sufficient to support immediate, short-term and long-term construction and operation, as reasonably anticipated as of the commencement date of this Agreement.
 - (b) Grantee will make reasonable commercial efforts to employ Two Hundred One (201) New Full-Time Employees by December 31, 2022. The "Employment Benchmark Measurement Number" is the Baseline Employment Number of Zero (0) Full-Time Employees plus the number of New Full-Time Employees for which a Draw Request is made pursuant to Section 6 herein.

6. Disbursement of the Grant.

- (a) *Capital Expenditures.* In order to obtain the Capital Expenditure Grant, Grantee shall submit the dated, written request (“Capex Draw Request”) which:
- (i) is signed by a duly authorized representative of Grantee with knowledge of the contents of the request for a disbursement to reimburse Capex Costs,
 - (ii) has a Government Funding Certification as provided in Section 15 of this Agreement, and
 - (iii) provides copies of invoices (or similar evidence of capital expenditures paid that is acceptable to DSB) related to the capital improvements verifying the Allowable Capex Costs sought to be reimbursed.
 - (iv) Grantee may submit one (1) Capex Draw Requests on or before March 15, 2020. An approved form of Capex Draw Request is attached as Exhibit A.
 - (v) The Authority will make disbursements equal to three percent (3%) of Allowable Capex costs for approved Capex Draw Requests by Grantee, but shall have no obligation to disburse more than Seven Hundred Fifty Thousand Dollars (\$750,000.00) for Allowable Capex Costs. Any such disbursements shall be subject to the Grantee’s obligation to repay the grant as specified in Section 11 herein.
- (b) *New Full-Time Employee Performance Draw Request.* Grantee will be eligible for three (3) annual draw requests submitted on or before January 15, 2021, 2022 and 2023 based on the number of New Full-Time Employee positions created up to Two Hundred One (201) New Full-Time Employees reported on or before December 31, 2022. In order to obtain a disbursement of the Performance Grant, the Grantee must submit a dated, written request (“New Full-Time Employee Performance Draw Request”) which:
- (i) is signed by an authorized representative of Grantee with knowledge of the contents of the request for a Draw Amount,
 - (ii) has a Government Funding Certification as provided in Section 15 of this Agreement,
 - (iii) certifies that the Grantee has maintained the Employment Benchmark Measurement Number,
 - (iv) certifies as of December 31 of the reporting year, the number of New Full-Time, Employees at each salary level identified in the Employment Table.