

North Canton City Council
Community and Economic Development Committee

Ordinance No. 50 - 2019

An ordinance authorizing the Mayor of the City of North Canton to enter into an Industrial and Commercial Job Creation Incentive Agreement ("Agreement") by and between the City and Diebold Nixdorf, Inc. ("Diebold Nixdorf"), and declaring the same to be an emergency.

WHEREAS, North Canton encourages job creation opportunities throughout the City; and

WHEREAS, Diebold Nixdorf is desirous of expanding its operations into the City, thereby increasing employment opportunities, provided certain development incentives are afforded to support such economic viability; and

WHEREAS, the City is desirous of providing Diebold Nixdorf with certain incentives for expanding its operations into the City, thereby creating new jobs, and increasing City revenue and economic development for our residents and guests; and

WHEREAS, North Canton and Diebold Nixdorf, pursuant to the Ohio Constitution, Article VIII, Section 13, Article XVIII, Sections 3 and 13, the Ohio Revised Code Section 718.15, possess the legal authority to enter into the Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

- Section 1. That the Mayor be, and is hereby authorized to enter into an Industrial and Commercial Job Creation Incentive Agreement with Diebold Nixdorf to increase economic development, employment opportunities, and City revenue. A copy of the Agreement is attached hereto and is incorporated herein by this reference.
- Section 2. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.
- Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary for immediate renovation and preparation of the work site, and to move operations thereby quickly realizing the Agreement's benefits of increased economic development, employment opportunities, and City revenue; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor.

Passed in Council this 24 day of June, 2019.



David Held, Mayor

Signed: 6/24, 2019

ATTEST:



Laura Brown, Director of Finance

**INDUSTRIAL AND COMMERCIAL
JOB CREATION INCENTIVE GRANT AGREEMENT**

This Agreement is made and entered into by and between THE CITY OF NORTH CANTON, OHIO, an Ohio municipal corporation, (“North Canton” or “the City”) and DIEBOLD NIXDORF, INC., an Ohio corporation (“DIEBOLD NIXDORF”) each a “Party” and collectively the “Parties”, as of the date indicated below.

RECITALS

WHEREAS, North Canton encourages job creation opportunities throughout the City;

WHEREAS, Diebold Nixdorf is desirous of establishing some of its operations in the City and increasing employment opportunities (the “Project”), provided certain development incentives are afforded to support the Project’s economic viability;

WHEREAS, North Canton City Council enacted Ordinance No. XXX-2019 on DATE, therein authorizing the Mayor to enter into this Industrial and Commercial Job Creation Incentive Grant Agreement (the “Agreement”), pursuant to the Ohio Constitution, Article VIII, Section 13, Article XVIII, Sections 3 and 13, and the Ohio Revised Code Section 718.15; and

WHEREAS, having the appropriate authority to enter into this Agreement, the City is desirous of providing Diebold Nixdorf with certain incentives for development of the Project, thereby increasing employment opportunities.

NOW, THEREFORE, the Parties intend to be legally bound, and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the benefit of which to be derived by the Parties herein from the execution hereof, the Parties agree as follows:

AGREEMENT

1. Description of the Project

Diebold Nixdorf shall lease space at 334 Orchard Avenue NE, North Canton, Ohio (the “Facility”), which will house some of its operations, for no less than five years, subject to terms and conditions customary for such lease agreements.

2. Project Investment

A. The Project will involve Diebold Nixdorf's direct investment in a lease, interior build out, furniture, fixtures, equipment, and relocation expenses.

B. Renovations of the Facility shall begin on or about July 1, 2019, and shall be completed on or about December 31, 2019.

3. Job Creation

A. Within 180 days of the Facility's completed renovation, Diebold Nixdorf shall create 215 new full time-equivalent jobs in the City ("New Jobs"), and shall maintain such level during the period of this Agreement. New Jobs will include both individuals directly employed by Diebold Nixdorf and independent contractors hired through third party companies.

B. The New Jobs shall generate at least \$8,393,944 of annual compensation or \$125,909.16 in annual, retained, City income tax revenue during the period of this Agreement.

4. Issuance of Grant

A. Pursuant to the terms and conditions of this Agreement, and contingent upon Diebold Nixdorf's creation and retention of the above-described compensation and jobs in North Canton, and the Project's completed renovation, the City shall award Diebold Nixdorf an Industrial and Commercial Job Creation Incentive Grant (the "Grant"). Unless extended, the Grant shall be paid in 5 annual installments in the manner described in Section 5 below.

B. The Grant amount shall be calculated annually based on Diebold Nixdorf's performance in meeting its compensation and job projections for the previous year, as further described and illustrated in Exhibit A, which is incorporated herein by this reference. The potential Grant amount per year is \$62,954.58, equal to 50% of the retained income tax amount calculated at a rate of 1.5% of the fixed projected annual compensation amount of \$8,393,944 for Years 1-5. Diebold Nixdorf must achieve at least 75% of the compensation projection (\$6,295,458.00) for the previous year to be eligible for Grant proceeds. Should Diebold Nixdorf exceed an annual compensation projection, the additional proceeds shall be used as the basis for determining the annual Grant payment in any given year having fallen short. Total additional amounts exceeding 25% above the annual compensation projection (compensation above \$10,492,430), however, shall not receive Grant proceeds.

The City will carry forward any unpaid Grant proceeds in its budget through the term of this Agreement to be utilized by Diebold Nixdorf when it qualifies for such Grant proceeds.

C. The annual amount of each Grant shall be based on the City retained tax revenue (calculated as 1.5% of the projected compensation) for each calendar year, including any extensions, as specified on Exhibit A.

D. The Grant shall be funded from only the following non-tax revenue sources: interest income, permit fees, activity fees, service charges, and monitoring fees. Grant payments are expressly conditioned upon North Canton's Director of Finance's sole determination of sufficient and appropriate non-tax revenue.

5. Grant Payments

A. Grant payments described herein shall not be remitted until the City receives Diebold Nixdorf's written certification that New Job projections set forth in Section 3 above have been met by: December 31, 2020 (Year 1); December 31, 2021 (Year 2); December 31, 2022 (Year 3); December 31, 2023 (Year 4); and December 31, 2024 (Year 5).

B. Provided Diebold Nixdorf files its Form 17- Reconciliation of Income Tax Withheld for the prior tax year by February 28th with the Regional Income Tax Agency, Grant payments based on the previous year's performance shall be made by June 30th of each year. If Diebold Nixdorf obtains an extension to file the Form 17- Reconciliation of Income Tax Withheld, Grant payments shall be made within three months of the extended filing date.

C. If Diebold Nixdorf does not meet Year 1 projections due to construction delays, not attributed to Diebold Nixdorf, the initial Grant payment may occur in the year following the Project's first full year. Grant amounts shall be calculated annually based on Diebold Nixdorf's performance in meeting its compensation and job projections for the previous year.

6. Payment of Taxes and Filing Reports and Returns

Diebold Nixdorf shall pay all City taxes and shall file applicable City tax reports and returns as required by law. If Diebold Nixdorf fails to pay such City taxes or file such City returns and reports, all incentives granted under this Agreement are terminated beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter. If Diebold Nixdorf cures such late

payments (including any applicable penalties or interest) or filing, the City shall reinstate the incentive grants under this Agreement.

7. Annual Review

A. Upon the City's request and on City-provided forms, Diebold Nixdorf shall provide the City with any information reasonably required to evaluate Diebold Nixdorf's compliance with the terms and conditions of this Agreement. This information will be requested annually following the February 28th deadline for submittal of Form 17- Reconciliation of Income Tax Withheld.

B. The City's Director of Finance shall prepare annual performance reports to be reviewed by a committee, consisting of the Director of Administration, the Director of Finance, and the President of Council (the "Committee").

C. If the Committee finds Diebold Nixdorf has not fully complied with the terms and conditions of this Agreement, the Committee shall promptly provide Diebold Nixdorf, via certified mail, a written report fully describing the alleged noncompliance, together with a reasonable opportunity to cure.

D. If the Committee, by majority vote of its members, determines Diebold Nixdorf failed to comply with the terms and conditions of this Agreement, and has not cured the noncompliance within a reasonable time, no Grant payment shall be made until, and if, the Committee determines, by the majority vote of its members, that the noncompliance has been cured.

E. If the Committee, by a majority vote of its members, determines that Diebold Nixdorf has complied with the terms of this Agreement, Grant payment shall be made in the manner described in Section 5 above.

8. Certification as to Taxes

Diebold Nixdorf certifies that at the time it executes this Agreement, it has no material delinquent: real property taxes; tangible personal property taxes; or taxes to any taxing authority of the State of Ohio. Diebold Nixdorf further certifies it has no material delinquent taxes for which it is liable under Chapters 5733, 5735, 5739, 5741, 5743, or 5753 of the Ohio Revised Code, or, if such delinquent taxes are owed, it currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such petition has been filed against it. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the

chapter of the Ohio Revised Code governing payment of those taxes.

9. Termination of Agreement

The date by which Year 1 projections must be met are specified in this Agreement. If the Project start or occupancy of the Project Facility is delayed, Diebold Nixdorf may send a written request to the Director of Administration for a one-year extension. The extension may be approved by the Committee with notice to City Council. If the Project does not proceed as specified herein, or within the one-year extension period, Council may rescind this Agreement upon Committee recommendation. If Diebold Nixdorf fails to meet 75% of its compensation or job projections in three consecutive years at any time during the term of this Agreement, City Council shall rescind this Agreement following the Director of Administration's annual report. If the Project, or its occupancy, begins in the 3rd or 4th quarter of its first year, and this causes Diebold Nixdorf to be unable to meet its Year 1 projections by December 31st of that year, the first full year of occupancy shall be considered Year 1 of this Agreement.

10. Non-Discrimination in Employment

By executing this Agreement, Diebold Nixdorf is committing to follow non-discriminatory employment practices acknowledging that no individual may be denied employment or subjected to employment discrimination on the basis of race, religion, sex, disability, color, national origin, military status, or ancestry.

11. Notices

Any notices, statements, acknowledgements, consent approvals, certificates, reports, records or requests required to be given on behalf of either Party shall be made in writing at the following addresses:

If to the City to: City of North Canton, Attn: Mayor, 145 North Main Street, North Canton, Ohio 44720. With a copy to: Director of Law.

If to Diebold Nixdorf to: Diebold Nixdorf, Inc., 5571 Global Gateway, North Canton, Ohio 44720, Attn: Real Estate Manager, with a copy to: Chief Legal Officer.

12. Miscellaneous

A. A waiver of any breach of any provision of this Agreement shall not operate or be construed as a waiver of a breach of any other provision of this Agreement or of any subsequent breach.

B. This Agreement shall not be transferrable or assignable by either Party.

C. This Agreement has been drafted jointly and there shall be no presumption of construction against either Party. The Parties agree the language of all parts of this Agreement shall in all cases be construed as a whole, according to the fair meaning, and not strictly for or against any Party.

D. This Agreement sets forth the entire Agreement between the Parties regarding the Industrial and Commercial Job Creation Incentive Grant Agreement awarded by this Agreement and fully supersedes all prior agreements or understandings (written or oral) between Diebold Nixdorf and the City regarding Grant awarded by this Agreement.

E. Except as otherwise noted above, no provisions of this Agreement may be modified, amended, waived or terminated, except in writing, signed by the Mayor of the City and an authorized Diebold Nixdorf representative.

F. If any part, term, or provision, of this Agreement is determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms and provisions shall not be affected thereby and any illegal, invalid or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

G. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto expressly consent to the jurisdiction of the courts located in the State of Ohio. The City and the Diebold Nixdorf agree that any disputes between them concerning this Agreement or any other matter shall be brought only in the Stark County Court of Common Pleas.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the last date below.

CITY OF NORTH CANTON, OHIO

By: _____
David J. Held, Mayor

DIEBOLD NIXDORF, INC.

By: Keith A. Twigg
Keith Twigg, Vice President, Corporate Controller

I hereby certify that sufficient funds are available to make the Grant payment described in the foregoing Agreement.

DIRECTOR OF FINANCE

By: _____
Laura Brown

Date: _____

Approved as to form and content

DIRECTOR OF LAW

By: _____
Timothy L. Fox

Date: _____

EXHIBIT A

Diebold Nixdorf Grant

	PROJECTED COMPENSATION	TAX		DIEBOLD 50%	CITY 45%	CIC 5%
		RETAINED INCOME TAX (1.5%)	INCENTIVE GRANT SCHEDULE			
YEAR 1	\$ 8,393,944.00	\$ 125,909.16	50%	\$ 62,954.58	\$ 56,659.12	\$ 6,295.46
YEAR 2	\$ 8,393,944.00	\$ 125,909.16	50%	\$ 62,954.58	\$ 56,659.12	\$ 6,295.46
YEAR 3	\$ 8,393,944.00	\$ 125,909.16	50%	\$ 62,954.58	\$ 56,659.12	\$ 6,295.46
YEAR 4	\$ 8,393,944.00	\$ 125,909.16	50%	\$ 62,954.58	\$ 56,659.12	\$ 6,295.46
YEAR 5	\$ 8,393,944.00	\$ 125,909.16	50%	\$ 62,954.58	\$ 56,659.12	\$ 6,295.46
TOTAL	\$ 41,969,720.00	\$ 629,545.80		\$ 314,772.90	\$ 283,295.60	\$ 31,477.30

Illustrations of Annual Grant Calculation:

If in Year 1, Diebold Nixdorf only achieves a compensation of \$5,036,366.40 (equal to 60% of the projected compensation), then it will not qualify for any tax incentives. The City will maintain the unpaid tax incentive amount of \$62,954.58 in its budget for the remaining four years.

If in Year 2, Diebold Nixdorf achieves a compensation of \$6,295,458.00 (equal to 75% of the projected compensation), then it will qualify for a tax incentive grant of 50% of the actual retained income tax equal to \$47,215.94 (calculated as 1.5% of compensation multiplied by 50%). The City will maintain the unpaid tax incentive amount of (\$62,954.58 from Year 1 and \$15,738.64 from Year 2) in its budget for the remaining three years.

If in Year 3, Diebold Nixdorf achieves a compensation of \$10,492,430.00 (equal to 125% of the projected compensation) with actual retained income tax equal to \$157,386.45 (calculated as 1.5% of compensation), then it will receive the full tax incentive grant of \$62,954.58 for Year 3 and the balance of \$15,738.64 will be considered additional grant proceeds that may be applied retroactively to offset the shortfall in Year 1 or Year 2. The City will maintain the unpaid tax incentive amount of \$62,954.58 in its budget for the remaining two years.