

**CONTRACT FOR PROFESSIONAL SERVICES - CONTINUING
PROPERTY APPRAISAL SERVICES
CONTRACT NO. 2005-47**

This Contract and Agreement is made and entered into between The City of Daytona Beach, Volusia County, Florida, a municipal corporation, created and existing under the laws of the State of Florida, hereinafter referred to as the CITY, and DIVERSIFIED PROPERTY SPECIALISTS, INC. authorized by the Florida Department of State to conduct business in the State of Florida, hereinafter referred to as the PROPERTY APPRAISER, on the date appearing on the last page hereof.

WHEREAS, the CITY has need from time to time to obtain market value appraisals for properties it owns or may consider acquiring; and

WHEREAS, the CITY desires the services of a qualified professional property appraisal firm to provide the needed services; and

WHEREAS, the CITY has duly advertised for proposals from professional property appraisal firms desiring to provide such services; and

WHEREAS, the CITY's Selection Committee recommends that the CITY enter into negotiations with PROPERTY APPRAISER for purposes of securing a contract for said services; and

WHEREAS, negotiations ensued between the CITY and the PROPERTY APPRAISER, and an agreement was reached for a Contract for Professional Appraisal Services subject to approval by the City Commission.

WITNESSETH, that in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I – Definition of Understanding: This Contract and Agreement defines all items of responsibility and is the only understanding between the parties. No oral understanding exists for performing the scope of work as set forth herein.

ARTICLE II – Overall Scope of Services: The Overall Scope of Services to be provided by the PROPERTY APPRAISER shall include, but not be limited to: property appraisal services for properties owned by the City or for properties under acquisition consideration determined by The CITY to be provided by the PROPERTY APPRAISER to the CITY and defined in the "REQUEST FOR PROPOSALS CONTRACT NUMBER: 2005-47, PROPERTY APPRAISAL SERVICES", attached hereto as Exhibit "A". The specific services to be provided under a particular work element of this Contract, however, may vary from the services defined in the "REQUEST FOR PROPOSALS".

ARTICLE III – Work Authorization Agreements: The Scope of Service for Work may be modified from time to time to provide for additional services, deletions of service, or redefinitions of services, for specific work assignments, as deemed necessary by the CITY. All such modifications as to services, schedules, and fees for Work Authorizations, shall be subject to negotiation between the CITY and PROPERTY APPRAISER and approval by the City Commission, the City Manager, or his designee, as described in Article II of this Contract.

The Scope of Services to be provided by the PROPERTY APPRAISER under Work Authorizations of this Contract shall be clearly described and attached as Exhibit "C", "Work Authorization Agreements".

ARTICLE IV – CITY's Responsibilities: The CITY agrees to make available for review and use by the PROPERTY APPRAISER, aerial photographs, reports, studies, and data relating to each project.

ARTICLE V – Compensation: Compensation for the specific task assignments are identified and defined in each Work Authorization Agreement, and represent the total compensation for all services, equipment and work products to be provided by the PROPERTY APPRAISER under the Work Elements authorized by this Contract.

Fees for work authorized shall be Lump Sum fees, or as otherwise negotiated, whichever is approved through the Work Authorization Agreement.

Lump Sum:

The Lump Sum fee constitutes a total cost for the services in individual scopes of work negotiated prior to the start of PROPERTY APPRAISER's services. Lump Sum fees shall be based upon an identifiable scope of work. Prior to finalizing the negotiation of a Lump Sum fee, PROPERTY APPRAISER shall provide the CITY with a detailed breakdown of man-hours by task and discipline, used in preparing the proposed Lump Sum.

Actual Cost with an Upset Limit:

Actual Cost with an Upset Limit fees shall be based upon actual hourly wages paid to PROPERTY APPRAISER'S professionals, times a multiplier of 1.25 for services rendered by employees assigned to the project. Reimbursable expenses associated with the project shall be invoiced to the CITY at the actual cost incurred by the PROPERTY APPRAISER. The not-to-exceed upset Limit shall be negotiated prior to the start of PROPERTY APPRAISER's services for any project or task. The Upset Limit can be exceeded only upon written authorization from the CITY.

PROPERTY APPRAISER agrees that the hourly rates used to determine rate charges for employees rendering services to the CITY pursuant to the Agreement shall not exceed the maximum rates as shown in the Schedule attached hereto as Exhibit "B" throughout the duration of Work Authorizations. The maximum rates listed in the Schedule shown in Exhibit "B" may be modified to compensate for PROPERTY APPRAISER's salary adjustments for subsequently authorized Work Elements as approved by the City Commission.

SUB-PROPERTY APPRAISERS:

The cost of services and reimbursable expenses for sub-property appraisers required for a project and employed by PROPERTY APPRAISER shall be negotiated as an element of the Lump Sum fee for the project. All sub-property appraisers proposed for use shall be named by PROPERTY APPRAISER at the time the Lump Sum fee is negotiated. No other special sub-property appraisers shall be used on a project unless and until approved by the City Commission of the CITY. Nothing contained herein shall be

deemed to preclude the CITY from contracting for the services of special sub-property appraisers directly with the provider of such services.

Modifications to Append Work Authorization Agreements:

In the event that the CITY requests a modification to Work Element Scope of Service, or any subsequently executed Work Authorization Agreements, the fees for such modification shall be negotiated based upon the specific services requested and at a level of compensation acceptable to both parties. The final authorization shall be subject to CITY approval as described in Article II of this Contract.

ARTICLE VI – Method of Payment: It is anticipated that most of the appraisal projects requested under this contract will result in fees less than the City Manager's individual approval limit. Where this is the case the City Manager may elect to approve the project requisition via his signature, thus avoiding the time-consuming process of preparing a Work Authorization and submitting it for approval by the City Commission. The PROPERTY APPRAISER shall invoice the CITY no greater than once monthly and such invoices shall contain a Progress Certification Statement. The statement shall state that the Work Element is completed to at least the percentage shown on the invoice and further supported by adequate documentation to justify the percentage completed, to the satisfaction of the City Engineer. The CITY shall only be required to pay monthly progress invoices up to 90 percent of the Lump Sum fee for Work Element services. The remainder of the Lump Sum fee for Work Element services shall be paid upon the CITY's review and approval of the Work Element.

All monthly invoices submitted by the PROPERTY APPRAISER and approved by the CITY shall be due and payable within 30 calendar days after such approval. The CITY agrees not to unreasonably withhold its approval of invoices submitted in compliance with the terms of this Contract.

The method of payment for services provided as part of future Work Elements of this Contract shall be negotiated to the satisfaction of both parties, with final authorization being subject to CITY approval as described in Article II of this Contract.

ARTICLE VII – Termination: It is agreed by and between each of the parties hereto, respectively, that each of the parties shall have, and there is hereby reserved to such parties and each of them, the right to cancel and annul this Contract upon thirty (30) days written notice to the other party.

Further, it is covenanted and agreed by and between the parties hereto, and each of them, respectively, that upon the expiration of such (30) day period from the notice of cancellation by either party, as herein provided, this Contract shall cease, and thereafter each of the parties shall be released from further liability under the terms hereof.

It is further covenanted and agreed by and between the parties hereto, that in case or in the event this Contract shall be canceled as herein provided, the CITY will pay unto the PROPERTY APPRAISER all amounts due under the terms hereof that can be justified to the CITY as of date of cancellation. The PROPERTY APPRAISER agrees that upon receipt of justified portion of fee, all documents will immediately be transmitted to the CITY for the CITY's use in accordance with their terms of this Contract.

ARTICLE VIII – Ownership of Documents: All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed during the term of and in accordance with the provisions of this Contract shall be the property of the CITY and delivered to the CITY upon demand, provided the payment of fees has been received by PROPERTY APPRAISER in accordance with the terms of this Contract.

ARTICLE IX – Reuse of Documents: CITY agrees to hold harmless and indemnify the PROPERTY APPRAISER from and against any claims, demands, actions or causes of actions as a result of the CITY's reuse of documents and drawings or other work products.

ARTICLE X – Nondiscrimination: PROPERTY APPRAISER will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. PROPERTY APPRAISER will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin.

PROPERTY APPRAISER agrees to comply with all local, state and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, PROPERTY APPRAISER agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

ARTICLE XI – Contingency Fee: PROPERTY APPRAISER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for PROPERTY APPRAISER, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for PROPERTY APPRAISER, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

ARTICLE XII – Indemnification: The PROPERTY APPRAISER shall indemnify and hold harmless the City of Daytona Beach and its agents, officers and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the work provided that the claim, damage, loss and expense is caused in whole or in part by any negligent act or omission of the City, PROPERTY APPRAISER, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder except PROPERTY APPRAISER shall not have to indemnify and hold harmless the City if such claim, damage, loss and expense is the result of the sole negligence of the City or of anyone directly or indirectly employed by the City or anyone for whose acts the City may be liable.

ARTICLE XIII – Insurance: PROPERTY APPRAISER shall purchase and maintain, as its own expense, the following types and amounts of insurance, in form and from companies satisfactory to the CITY:

1. **Workers' Compensation Insurance:** As required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of the PROPERTY APPRAISER, employed at the site of the work or in any way connected with the work, which is the

subject of this service. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employer's Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

2. **Professional Liability Insurance:** Professional Liability Insurance insuring the PROPERTY APPRAISER and other interest, including, but not limited to, any associated or sub-sidiary companies involved in the work, for errors or omissions in the performance of professional services to be rendered pursuant to this Agreement. The limit of liability of Professional Liability Insurance shall be no less than \$1,000,000.

Any insurance policy required by Article XIII, Section 2, hereof may contain a reasonable deductible provision provided advance notice of said deductible provision is given by the PROPERTY APPRAISER to the CITY and approval from the CITY is given, which approval shall not be unreasonably withheld or delayed.

The PROPERTY APPRAISER shall furnish proof of insurance acceptable to the City prior to or at the time of execution of the agreement and the PROPERTY APPRAISER shall not commence work under this agreement until he has obtained all the insurance required under this agreement and such insurance has been filed with and approved by the City, nor shall the PROPERTY APPRAISER allow any subcontractor to commence work on its subcontract until similar insurance required of the subcontractor has been so obtained and approved.

The PROPERTY APPRAISER shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation: "In the event of cancellation of this policy by the insurer or any insured, the company shall give not less than thirty (30) days advance written notice to: "City Clerk, The City of Daytona Beach, P. O. Box 2451, Daytona Beach, FL 32215-2451." If requested by the CITY, the PROPERTY APPRAISER will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

The PROPERTY APPRAISER shall file replacement certificates 30 days prior to expiration of termination of the required insurance occurring prior to the acceptance of the work by the City. In the event such insurance shall lapse, the City expressly reserves the right to renew the insurance at the PROPERTY APPRAISER's expense.

The PROPERTY APPRAISER may not cancel the insurance required by this agreement until the work is completed, accepted by the City and the PROPERTY APPRAISER has received written notification from the Risk Management Division of the City that the PROPERTY APPRAISER may cancel the insurance required by this agreement and the date upon which the insurance may be canceled. The Risk Management Division of the City will provide such written notification at the request of the PROPERTY APPRAISER if the request is made no earlier than two weeks before the work is to be completed.

ARTICLE XIV - Truth in Negotiations Certificate: The PROPERTY APPRAISER hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

ARTICLE XV – Opinions of Cost: Opinions or probable construction costs, financial evaluations feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by PROPERTY APPRAISER hereunder will be made on the basis of PROPERTY APPRAISER's experience and qualifications and represent PROPERTY APPRAISER's best judgement as an experienced and qualified civil engineering professional. It is recognized, however, that PROPERTY APPRAISER does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractor's methods of determining their prices, and that any utilitarian evaluation of any facility to be constructed or work to be performed on the basis of the report, must of necessity be speculative until completion of its detailed design.

Accordingly, PROPERTY APPRAISER does not guarantee that proposals to purchase, bids, or actual costs will not vary from opinions, evaluations or studies submitted by PROPERTY APPRAISER to CITY hereunder.

ARTICLE XVI – Third Parties: Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or the PROPERTY APPRAISER. The PROPERTY APPRAISER'S services under this agreement are being performed solely for the CITY's benefit, and no other entity shall have any claim against the PROPERTY APPRAISER because of this agreement or the performance or nonperformance of services hereunder.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed in triplicate original and effective this 15 day of February, 2006.

WITNESSES:

Bolelie H. Cox
TOM C DASH

THE CITY OF DAYTONA BEACH

By: Yvonne Scarlett Golden
Yvonne Scarlett Golden, Mayor
Attest: Jennifer L. Thomas
Jennifer L. Thomas, City Clerk

WITNESSES:

Tom R. El
Kathy Jensen

DIVERSIFIED PROPERTY SPECIALISTS, INC.

By: C. Lee Lobban
C. LEE Lobban, President
Attest: Gayle Tolba

APPROVED AS TO LEGAL FORM:

[Signature]
CITY ATTORNEY

STATEMENT OF PURPOSE

The City of Daytona Beach is seeking Proposals to provide property appraisal services from qualified property appraisal firms. Appraisals subsequently provided will be used to establish a just value of properties the City wishes to dispose of, acquire, or trade. Appraisals will also be needed to acquire additional right-of-way from properties contiguous to existing rights-of-way.

SCOPE OF SERVICES

The Consultant is to provide the necessary appraisal services on an as needed basis. Properties for which the City anticipates needing appraisals include vacant and developed single residential parcels from less than an acre to several acres in size, vacant and developed commercial properties, undeveloped lands up to hundreds of acres in size, and government properties both with existing structures and without any significant buildings.

The City is looking for creative means of acquiring appraisals in a timely manner and at a reasonable cost. Firms interested in submitting Proposals are encouraged to address how these goals might be attained. For example, if a matrix of appraisal services verses the appraisal fee can be developed whereby the fee is predetermined based upon the size and use of the property, that could potentially significantly reduce or eliminate the time needed to develop a fee for each requested appraisal. Similarly, the City would like interested firms to address time requirements from date of request until the appraisal document is delivered.

The successful firm will work closely with the Support Services Director to coordinate the appraisal needs. The City intends to either develop a list of pre-qualified appraisal firms and/or to enter into a continuing contract(s) covering these services. As the need for appraisal services arises, the Appraisal Firm will be asked to confirm a fee and schedule for a specific work assignment. Upon acceptance of the proposed fee, a purchase order will then be issued and the firm will be authorized to proceed with the work. If the fee exceeds the established maximum that can be approved without City Commission approval (currently \$15,000), the fee will be presented to the City Commission for consideration. The Firm will be expected to perform the work within the stated time frame unless changes in the scope warrant additional time.

PROPOSAL REQUIREMENTS

1. Inquiries concerning this Request for Proposals should be addressed to David C. Ponitz, P.E., Deputy City Engineer at 386.671.8621.
2. Eight copies of the Statement of Interest Package must be submitted no later than 2:00 p.m., 06 July 2005, and addressed to:

EXHIBIT "B"

**CONTRACT FOR PROFESSIONAL SERVICES – CONTINUING
PROPERTY APPRAISER SERVICES
COB CONTRACT NO.: 2005-47**

2005/2006 Hourly Rate Schedule

The following schedule provides a maximum direct salary hourly rate for the disciplines which are likely to be engaged for projects associated with the contract referenced above for The City of Daytona Beach.

<u>Category of Employee</u>	<u>Hourly Rate</u>
Principal	\$65.00
Appraiser of Record	\$50.00
Appraiser	\$45.00
Research Technician	\$35.00
Secretary	\$25.00
Clerical	\$20.00
Expert Witness	\$125.00

NOTE: Actual Cost with and Upset Limit fee for projects will be based upon actual hourly wages paid to PROPERTY APPRAISER professionals, not to exceed the above listed rates, times the multiplier contained in ARTICLE V of the Contract.