

**THIRD AMENDMENT TO AGREEMENT
BETWEEN
THE CITY OF JACKSONVILLE
AND
JACKSONVILLE UNIVERSITY
FOR
CONTINUING MANATEE PROTECTION STUDIES**

THIS THIRD AMENDMENT (“Third Amendment”) to the Agreement is made and entered into in duplicate on this ____ day of _____, 2021, by and between the **CITY OF JACKSONVILLE**, a Florida municipal corporation (the “CITY”) and **JACKSONVILLE UNIVERSITY**, a Florida non-profit corporation with a business address at 2800 University Boulevard North, Jacksonville, Florida 32211 (the “CONSULTANT”).

RECITALS:

WHEREAS, pursuant to the appropriation set forth in **Ordinance 2018-540-E**, the CITY and CONSULTANT entered into that certain Continuing Manatee Protection Studies Agreement, **Contract No. 5687-30**, dated October 4, 2018 (the “Agreement”); and

WHEREAS, pursuant to Paragraph 3.2 of the Agreement, the term may be renewed, in the sole discretion of the CITY, for up to four (4) additional one (1) year periods, upon terms and conditions mutually acceptable to the parties; and

WHEREAS, pursuant to Paragraph 1.2 of the Agreement, services, functions, or responsibilities not specifically described in the Agreement that are necessary for the proper performance of the Agreement are deemed to be implied by and included within the Agreement’s Scope of Services; and

WHEREAS, the CITY, through **Ordinance 2019-645-E**, authorized the Mayor and the Corporation Secretary to execute a first amendment of the Agreement to: (1) renew the Agreement for an additional one (1) year of Services (\$90,000.00); and (2) conduct, the Boater Speed Zone Compliance Study, as described in Task 8 (the “Study”) (\$90,000.00), thus bringing the maximum

indebtedness of the CITY on the Agreement which began in 2018 to **\$270,000.00**; and

WHEREAS, the CITY, through **Ordinance 2020-588-E**, authorized the Mayor and the Corporation Secretary to execute a second amendment of the Agreement to: (1) renew the Agreement for an additional one (1) year of Services (\$90,000.00); and (2) continue, the Study, thus bringing the maximum indebtedness of the CITY on the Agreement which began in 2018 to **\$360,000.00**; and

WHEREAS, the initiation of the Study was delayed due to continued discussions with the Florida Fish and Wildlife Conservation Commission regarding the scope of work, and was further delayed due to COVID-19, thus the Study was initiated, but not completed in FY 2020/2021; and

WHEREAS, the CITY desires to amend the Agreement for the third time, in order to: (1) renew the Agreement pursuant to Paragraph 3.2 of the Agreement for Fiscal Year 2021/2022 to continue Services of CONSULTANT and increase the CITY's maximum indebtedness to cover an additional year of services; and (2) allow the delayed completion of the Study; and

WHEREAS, the CITY and the CONSULTANT have negotiated mutually satisfactory terms for the execution of this Agreement; and

WHEREAS, this Third Amendment is necessary and appropriate to effectuate the tasks identified in the Ordinance and provided for in the Agreement; now therefore

IN CONSIDERATION of the premises and mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. The above-stated Recitals are accurate, true and correct and are incorporated herein and made a part hereof by this reference.
2. Capitalized terms used but not defined herein shall have the meanings given them in the Agreement.
3. Section 1.1 of the Agreement is amended to reflect that Exhibit "A" has been revised for a third time, and shall now read as follows:

“1.1 CITY hereby engages CONSULTANT and CONSULTANT hereby accepts said engagement for the purpose of providing to CITY professional services for continuing manatee protection studies, as described in and according to the provisions of: “PROPOSAL: Manatee Protection Project Continuation, City of Jacksonville, Duval County, Florida, October 1, 2021 – September 30, 2022,” attached hereto as **Third Revised Exhibit “A”** (the “Services”) and by this reference, made a part hereof.”

4. Pursuant to Section 3.2 of the Agreement, the Services are hereby extended an additional year to September 30, 2022, with one (1) one-year renewal option remaining.

5. Section 7.1.2 of the Agreement is amended to increase the maximum indebtedness under the Agreement; and, as amended, shall read as follows:

“7.1.2 The maximum of indebtedness of the CITY for all fees, reimbursable items, or other costs for Services provided by CONSULTANT pursuant to this Agreement shall not exceed the sum of NINETY THOUSAND AND 00/100 DOLLARS (\$90,000.00) for Services for Fiscal Year 2018-2019; NINETY THOUSAND AND 00/100 DOLLARS (\$90,000.00) for Services for Fiscal Year 2019-2020; NINETY THOUSAND AND 00/100 DOLLARS (\$90,000.00) for the Boater Speed Zone Compliance Study for Fiscal Year 2019-2020, carried over to Fiscal Years 2020-2021 and 2021-2022; NINETY THOUSAND AND 00/100 DOLLARS (\$90,000.00) for Services for Fiscal Year 2020-2021; and NINETY THOUSAND AND 00/100 DOLLARS (\$90,000.00) for Fiscal Year 2021-2022, for a combined CITY indebtedness of not more than FOUR HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$450,000.00) for the term of this Agreement.”

6. The **Second Revised Exhibit “A”** (Scope of Services) to the Agreement is deleted in its entirety and replaced with the attached **Third Revised Exhibit “A”** (Scope of Services); and all references in the Agreement to **Exhibit “A”** shall mean and refer to the **Third Revised Exhibit**

“A”, as attached hereto to this Third Amendment and made a part hereof.

7. Ratification of actions. All actions of the parties from the Effective Date through the date of execution of this Third Amendment are hereby ratified and confirmed in all respects, to the extent such actions are consistent with the terms of the Agreement.

8. All other terms of the Agreement except those expressly amended in this Third Amendment shall remain unchanged and shall continue in full force and effect; and, the Agreement, as amended herein, is hereby ratified and confirmed by the parties and is in full force and effect as of the date of this Third Amendment.

9. This Third Amendment may be executed in counterparts, .PDF copies, and/or facsimile signatures, the counterparts of which, when taken together, shall constitute but one entire and original Third Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment the day and year first above written.

WITNESS:

JACKSONVILLE UNIVERSITY

By _____
Signature

By _____
Signature

Type/Print Name

Type/Print Name

Title

Title

ATTEST:

CITY OF JACKSONVILLE

By _____
James R. McCain, Jr.
Corporation Secretary

By _____
Lenny Curry, Mayor

In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

Director of Administration and Finance
CITY Contract Number:
Amendment No.:3

Form Approved:

Office of General Counsel

GC-#1455180-v2-Revised_-_Manatee_Protection_Contract_-_3rd_renewal_2021-2022.docx

Third Revised Exhibit “A”

PROPOSAL

Manatee Protection Project

Continuation

City of Jacksonville

Duval County, Florida

October 1, 2021 – September 30, 2022

Prepared by:

A. Quinton White, Jr., Ph.D.
Gerard Pinto, Ph.D.

Jacksonville University
Jacksonville, FL 32211

I. General Information:

Request for Proposal from: City of Jacksonville, Florida Waterways Commission

Subject: Maintaining a Comprehensive Database for a Manatee Management Protection Plan and Manatee Awareness Program; Consultant to Waterways Commission on Water related matters

Location: Duval County, Florida

II. Background and General Information:

This proposal is to continue the contract to maintain the comprehensive database for the Duval County Manatee Protection Plan that was approved by the State of Florida. This proposal is for the period of October 1, 2021 to September 30, 2022.

The City of Jacksonville has embarked on a focused vision to activate the St. Johns River with extensive effort to promote development and increase boating activity on the St. Johns River. The Florida Manatee (*Trichechus manatus*) is Florida's state marine mammal and is a significant concern to the people of Duval County, as well as the entire state. Throughout Florida, the manatee, which is protected under state and federal law, has suffered increasing mortality with the majority of the deaths repeatedly related to boating activities. Northeast Florida, including Duval County, has shown a general decline in manatee deaths over the past several years.

The St. Johns River provides a habitat for the manatee along with supporting tremendous recreational and industrial use. Boat traffic in the river is very diverse. It includes port facilities for large industrial and commercial shippers, commercial fishing, sport fishing and recreational activity. More than 200 large commercial boats/ships per month enter and exit the mouth of the St. Johns River in Duval County with the number expected to increase over the next decade with the possible deepening of the port channel. These vessels represent a significant economic factor for Duval County and the entire First Coast. In addition, there are almost 30,000 recreational boats registered in Duval County.

A wide range of manatee usage of the St. Johns River has been observed. Manatees are most often seen traveling or moving from one location to another. Manatees were also observed feeding, cavorting/mating and resting. Distribution varies throughout the year with sightings of manatees during the late winter season being uncommon. Manatee abundance in Duval County waters increased during the spring and peaked during the late summer (Valade 1991, White 2002). Jacksonville University has conducted additional studies to build a significant database to be used to develop a Manatee Management Plan.

The large amount of boating activity on the St. Johns River and the number of manatees that has been documented using the river make it critical that a comprehensive management plan for the waters of Duval County be enacted to protect both manatee and human activity. We have been accumulating information on the manatee usage of the St. Johns River in an effort to provide a complete database and foundation for a comprehensive management plan. Several areas of research are necessary to continue to document the habitat, manatee usage and human usage of the St. Johns River.

Jacksonville University has been gathering existing information concerning manatee behavior and natural history, including studies performed by various state, county and city agencies, along with universities and consultants. Studies on boaters including industrial, commercial sport and commercial fishing and recreation have also been included in the database.

Although a diverse amount of information exists concerning the manatee, very little information exists on the effects of boating on the manatee population. This proposal will expand the Manatee Awareness Program and examine boating activity on manatee behavior.

III. Description of Project:

This proposal outlines a “Scope of Work” for the continuation of the Manatee Protection Plan. The study/project is to continue to assemble and analyze an information database in order to update the management plan so that it continues to provide adequate protection for all concerned. In addition, public support of the plan can be enhanced through education and input from concerned citizens and industries.

In addition, this proposal includes environmental consulting services to the Waterways Commission on water-related issues concerning the St. Johns River, its tributaries and near-shore waters of the Atlantic Ocean. Any additional scope of services can be negotiated on a per-need cost basis.

IV. Scope of Work:

JU Manatee Contract Deliverables – 2021-2022

TASK 1 - Support Jacksonville Waterways Commission - monthly

Provide monthly updates on manatee research, artificial reefs and water-related issues in Duval County. At the end of the year, summarize manatee information discussed during the year.

TASK 2 - Continuation of Manatee Sighting – 3 times per year

Continuation of manatee sighting flights for the county by aerial surveillance to determine movement patterns of manatees. This information will be collected using surveys conducted approximately three times a year, with additional flights when possible.

TASK 3 - Waterways/ Manatee Information Signage Inventory – update database

Jacksonville University will update database of all local manatee, boating-safety signage and information kiosks at boat ramps in Duval County to maintain current information. This will include all commercial and multi-family marinas and docks and all manatee information signs and kiosks. Provide database to City at the end of the contract year.

TASK 4 - Community Education Efforts- Report efforts quarterly

JU will report to COJ a summary of educational efforts quarterly.

- A. If requested, JU will work with the COJ, JSO, FWC, and FWS LE to develop a pamphlet to be distributed via boat facilities and/or mail outs. Pamphlets will include boating safety and manatee protection zones. JU is not responsible for printing and mailing of brochure.
- B. Work with the NE Florida Regional Council and its partners to increase manatee awareness.
- C. Explore and develop new education and awareness programs.
- D. Maintain JU website, ju.edu/MARCO.
- E. Track number of calls to JU Manatee Hot Line.
- F. Keep PowerPoint presentation up to date for educational programming.

TASK 5 - Port Education/Awareness Reporting – Report quarterly

- A. Work with port entities to track level of shipping activity, determine which of the manatee efforts are working, and assist in making their manatee programs effective.
- B. Work with JAXPORT to educate commercial ships operators about manatee safe-docking procedures.
- C. Work with JAXPORT to decrease incidents of large ships displacing or destroying waterway signage
- D. Attend JAXPORT meetings as necessary.

TASK 6 - Law Enforcement Efforts – Report quarterly

- A. Through the Law Enforcement Task Force, work with JSO to provide the information requested by USFWS and in the format acceptable to the agency.
- B. Track law enforcement-efforts -to direct JSO to target certain areas in order to use resources efficiently and effectively.

C. Attend COJ Law Enforcement Task Force meetings as necessary.

D. At the end of the year, summarize law enforcement activities and make recommendations for increased coordination and communication.

TASK 7 - Update marine facility inventory

Provide COJ with updated marine facility inventory database of all facilities with five more slips in Duval County, indicating any significant changes in 2019-2020. Database will include:

- A. List of all marinas – wet and dry storage, public and private and multi- family.
- B. Number of slips and percentage of occupancy.
- C. List of all boat ramps and number of parking spaces and launch lanes.
- D. List of all commercial facilities and number of slips.
- E. Provide database to the City.

TASK 8 –Boater Speed Zone Compliance Study

Complete the boater speed zone compliance study based on protocols agreed upon with FWC. The Study was conducted for one (1) year at various locations, days and times throughout the year.

TASK 9 - MPP Implementation Report – Provide report at end of the year

Compile and write yearly implementation summary report due to FWC. Analyze and summarize all MPP data collected and compare protection and education efforts to past years. Report will include but is not limited to the following tasks:

- A. All manatee education presentations provided by COJ, JU, and JSO Documented items will include:
 - 1. The number and type of presentations
 - 2. Type of group: public or private
 - 3. The intensity of use of various educational materials
 - 4. Some gauge of public reception
 - 5. Any other details that may allow for manatee awareness program effectiveness evaluation.
- B. Manatee Mortality Data – Provide to COJ end of the year report/maps.
- C. Manatee Habitat Resource Map - Provide to COJ updated GIS map.
- D. Summarize JSO law enforcement efforts based on JSO reports and input.

- E. Make recommendations on all MPP implementation tasks.

V. Budgetary Schedule

Funding of this project is a fixed fee of \$90,000.00. Both JU benefits costs and flight costs have increased for the next year. The budget includes all specific objectives, all consultant’s fees, direct labor, benefits (30%), travel, materials, aerial survey and overhead (10%). Any additional services will be negotiated on an as-needed basis.

VI. Insurance Requirements:

Jacksonville University shall procure and maintain during the entire life of this agreement insurance of the types and in the minimum amounts as required by the City of Jacksonville.

VII. Fee Submittal:

Invoices will be submitted monthly and are payable upon receipt by the City of Jacksonville.

JU Manatee Study - Insurance Requirements

Without limiting its liability under this Agreement, Consultant shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Agreement shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

SCHEDULE	LIMITS
Workers Compensation	Florida Statutory Coverage
Employer's Liability	\$100,000 Each Accident
(including appropriate Federal Acts)	\$100,000 Disease Policy Limit
	\$100,000 Each Employee/Disease

This insurance shall cover the Consultant (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$50,000	Fire Damage
	\$5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City’s Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability \$1,000,000 Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Services)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability \$1,000,000 per Claim and Aggregate
(Including Medical Malpractice when applicable)

Any entity performing or hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a three year reporting option beyond the annual expiration date of the policy.

Aircraft Liability \$1,000,000 per claim

To the extent watercraft are utilized in the Work, the Applicant shall purchase and maintain, or cause its contractors and subcontractors to purchase and maintain, insurance with amounts not less than the limits of \$1,000,000 per occurrence, and which shall, at a minimum, cover the Applicant and contractor/subcontractor for injuries or damage arising out of the use of all owned, non-owned and hired watercraft. The City, the City’s members, officials, employees and agents, the Engineer, and the Program Management Firm(s) (when program management services are provided) shall be named in the Commercial Watercraft Liability policy as "an additional insured."

Additional Insurance Provisions

A. Certificates of Insurance. Consultant shall deliver to the City Certificates of Insurance that show the corresponding **City Contract or Bid Number** in the Description, **Additional Insureds**,

Waivers of Subrogation and Primary & Non-Contributory statement as provided below. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.

B. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.

C. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.

D. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.

E. Consultant's Insurance Primary. The insurance provided by the Consultant shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.

F. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Consultant. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self- insured retentions related to this Contract.

G. Consultant's Insurance. Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Consultant or its Subcontractors, employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

H. Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by Consultant shall relieve Consultant of Consultant's full responsibility to provide insurance as required under this Contract.

I. Notice. The Consultant shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Consultant, as applicable, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

J. Survival. Anything to the contrary notwithstanding, the liabilities of the Consultant under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or

termination of insurance coverage.

K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.

L. Special Provision: Prior to executing this Agreement, Consultant shall present this Agreement and insurance requirements attachments to its Insurance Agent Affirming: 1) That the Agent has personally reviewed the insurance requirements of the Agreement Documents, and (2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of the Consultant.

Indemnification

Consultant and its subcontractors shall hold harmless, indemnify, and defend the City of Jacksonville and City's members, officers, officials, employees and agents (collectively the "Indemnified Parties") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties' performance of the Agreement, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within 60 days, for the Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to Buyer, so that the Service or product is non-infringing.

If an Indemnifying Party exercises its obligation under this Agreement, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

**Manatee Protection Plan
Baseline Study Budget**

Direct Labor

Salaries	\$60,000
Senior Scientist	(\$ 9,000)
Research Scientist	(\$51,000)

Benefits @ 30% of Direct Labor	<u>\$ 18,000</u>
	\$ 78,000

<u>Aviation</u>	\$3,800
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Subtotal	\$81,800
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<u>Overhead</u> - 10% of Subtotal	<u>\$ 8,200</u>
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Total	\$90,000
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Note: Benefits to include, as appropriate, social security, medical insurance and retirement contributions.