



**ALEXANDRIA CITY SCHOOL BOARD
dba
ALEXANDRIA CITY PUBLIC SCHOOLS
ALEXANDRIA, VIRGINIA**

And

MELKA MARINE, INC.

FOR

DEE CAMPBELL ROWING CENTER DOCK REPAIRS AND REPLACEMENT

This Agreement (hereinafter "Agreement") dated September 27, 2018, is made by and between the Alexandria City School Board dba Alexandria City Public Schools (hereinafter referred to as "ACPS"), a public entity and/or political subdivision of the Commonwealth of Virginia with offices located at 1340 Braddock Place, Alexandria, Virginia 22314, and Melka Marine, Inc., a corporation duly organized under the laws of the Commonwealth of Virginia, who is authorized to do business in the Commonwealth of Virginia with a principal place of business located at 3119 Burgundy Road, Alexandria, VA 22303 (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, pursuant to the Virginia Public Procurement Act ("VPPA"), §2.2-4302 ACPS received bids in response to Invitation to Bid Number 190702;

WHEREAS, ACPS after careful review determined the Contractor meets all the criteria as set forth in ITB No. 190702 and offers the most responsive and responsible bid to ACPS;

WHEREAS, on August 22, 2018, the Contractor was selected by ACPS for the provision of dock repairs and replacement, subject to the term and provisions in the Invitation to Bid and this Agreement; and

NOW, THEREFORE, with the intent to be legally bound hereby, the parties to this Agreement set forth the following as the terms and conditions of their understanding and in consideration of the mutual promises contained herein, ACPS and Contractor agree as follows:

1. AGREEMENT DOCUMENTS

The Agreement Documents are comprised of the following:

1. The terms and conditions of this Agreement, including all written and properly executed modifications, amendments, and change orders after execution of this Agreement by an authorized representative of the parties;
2. Exhibit A – The Original Bid Form from ITB No. 190702, submitted and duly signed by the Contractor, dated August 22, 2018; and
3. Invitation to Bid No. 190702, in its entirety, hereby incorporated by reference.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Agreement Documents, the terms and provision of this Agreement shall prevail over the other Agreement Documents.

The Agreement Documents set forth the entire Agreement between ACPS and the Contractor. ACPS and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' Agreement which is not contained in the Agreement Documents. The Agreement Documents may be referred to herein as the "Contract" or "Agreement."

2. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

The performance of the Contractor required by this Agreement is subject to the review and approval of the ACPS's Contracting Officer's Technical Representative (COTR), who shall be appointed by ACPS Superintendent or designee.

However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work under this Agreement. Where the term "Engineer" is used in the Contract Documents, it shall be interpreted to mean "Project Officer".

ACPS has authorized the consultant identified below to act as ACPS's representatives for specific purposes, to perform specified duties and responsibilities, and to have the rights and authorities as assigned in connection with completion of the work in accordance with the Agreement Documents, until such time as ACPS may notify the Contractor otherwise:

- HGA Architects and Engineering, LLC
44 Canal Center Plaza, Suite 100
Alexandria, VA 22314

The General Conditions set forth the duties and authority of the Contractor. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work under this Agreement.

3. SCOPE OF WORK

The Contractor will furnish all labor, materials, and equipment to provide dock repairs and replacement as listed in the ITB for Dee Campbell Rowing Center located at the address listed below (the "Project") and all other work shown, described and required in the Agreement Documents (hereinafter "the Work"). The Work shall be performed according to the standards established by the Agreement Documents read together as a single specification. It shall be the obligation of the Contractor to obtain clarification from the COTR concerning any questions about or conflicts in the specifications, drawings and construction notes in a timely way so as not to delay the progress of the Work. The Agreement Documents set forth the minimum Work estimated by ACPS and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at solely the Contractor's cost, to provide sufficient services to fulfill the purposes of the Work. Nothing in the Agreement Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work.

- Dee Campbell Rowing Center
One Madison Street
Alexandria, VA 22314.

4. TIME FOR COMPLETION

Work under this Agreement shall achieve Substantial Completion of construction by January 20, 2019, after the commencement date given a Notice to Proceed provided by ACPS to the Contractor, subject to any modifications made as provided for in the Agreement Documents. This date shall be the Period of Performance for Substantial Completion. Final Completion of the Work shall be completed no later than February 20, 2019.

No Work shall be deemed Substantially or Finally Complete until it meets the requirements of Substantial Completion or Final Completion as set forth in the General Conditions.

The Contractor agrees that the time for completion of the Work as described in the Agreement Documents shall govern unless specifically amended in writing by ACPS, and that no claims for early completion are allowed to be presented by the Contractor to ACPS unless specifically provided for in the Agreement Documents.

5. AGREEMENT AMOUNT

ACPS will pay the Contractor according to the unit prices shown in Exhibit A, a **Not to Exceed (NTE) Amount of \$549,767.00**, in accordance with the Progress Payments and Retainage paragraph for the Contractor's completion of the Work described and required in the Agreement Documents. The Contractor agrees that it shall complete the Work for the total Agreement Amount specified in this section unless such amount is modified as provided in this Agreement. The Contract Amount includes all of the Contractor's costs and fees (profit) and is inclusive of all anticipated or known site conditions, anticipated or known materials, labor, and equipment costs, or any other costs which should reasonably have been expected by the Agreement Documents.

6. PROGRESS PAYMENTS AND RETAINAGE

ACPS will make monthly progress or partial payments to the Contractor upon written application by the Contractor, on the basis of an estimate, provided by the Contractor and approved by ACPS, of all work performed during the preceding calendar month to the satisfaction of ACPS. However, in making any progress payment, five percent (5%) of the amount of the estimate upon which the progress payment is based will be retained by ACPS until Final Completion and acceptance of all Work covered by the Agreement.

All material and work covered by partial payments made by ACPS will become the property solely of ACPS at the time the partial payment is made, but this provision will not be construed as relieving the Contractor from the sole responsibility, care and custody for all materials and work upon which payments have been made, or the restoration of any damaged work, nor shall this provision be construed as a waiver of ACPS's right to require the fulfillment of all of the terms of the Agreement.

When calculating payment for materials on-site, ACPS shall not pay for materials which are not scheduled for incorporation into the Work within thirty (30) days from the date of application for payment.

7. RELEASE AND REQUEST FOR FINAL PAYMENT

Upon Final Completion of the Project and before Final Acceptance, the Contractor will submit to ACPS a signed copy of ACPS' Release and Request for Final Payment form, per the General Conditions.

8. PAYMENTS AND INVOICES

Payments will be recorded by ACPS as net forty five (45) days. The Contractor will be paid within forty five days after the date of receipt of a correct (as determined by ACPS) invoice approved by ACPS for completed work which is reasonable and allocable to the Contract, or the date of acceptance of the Work which meets the Agreement requirements, whichever is later. Payments will be made in accordance with the terms and conditions of Exhibit A. The numbers of ACPS Agreement and Purchase Order (PO) pursuant to which authority shipments have been made or

services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified by the Agreement Documents, payment shall not be made prior to delivery and acceptance of the entire order by ACPS. All invoices shall be sent to the following address:

Tracey A. Armah
Alexandria City School Board dba Alexandria City Public Schools
1340 Braddock Place, Suite 610
Alexandria, Virginia 22314
Email: CIPInvoices@acps.k12.va.us

9. WEEKLY REPORTS

At the end of each week that the Contractor or any of its Subcontractors at all tiers performs Work on the Site, the Contractor shall submit a weekly report to ACPS (on a form approved by ACPS), that contains at least the following information:

1. Labor - The number of workers, their classification and hours worked.
2. Material - Describe and list quantities of materials used.
3. Equipment - Show type of equipment, size, and hours of operation, including loading and transportation, if applicable.
4. Areas of Work - State the areas of the Site on which Work was performed and a detailed description, status and progress of the Work in each such area at the beginning and end of the day.
5. Accidents, Delays, Defective Work - Describe in detail any injuries to workers, accidents, delays, or Defective Work that were encountered.
6. Weather – Identify the temperature and precipitation, if any.

10. INSPECTIONS AND PERMITS

Among the many other requirements contained herein, the Contractor shall be responsible to conduct all Work in full compliance with the conditions of permit(s) obtained for the project.

Except as otherwise provided in the Contract Documents, all inspections, permits (including but not necessarily limited to the building permit), licenses and fees required by Applicable Laws, the Contract Documents or government agencies for the Work shall be scheduled, arranged, requested, coordinated, obtained, paid for and supervised by the Contractor. With the exception of third-party inspectors that may be retained by ACPS, the costs for such inspections, permits, licenses and fees charged by third-parties or government agencies shall be a Cost of the Work when the Purchase Order is based upon and sets forth a GMP. When, in order to comply with the intent of the Contract Documents, inspections must be made at the plant or mill of the manufacturer or fabricator of material or equipment, the Contractor shall notify the persons concerned and the Engineer a sufficient length of time in advance to allow for arrangements to be made for such inspection and for any observations by the Engineer, ACPS or such others as they may designate.

11. AUDIT

The Contractor agrees to retain all books, records and other documents related to this Agreement for at least five (5) years after final payment. ACPS or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the term of this Agreement or after the Final completion. If the Contractor wishes to destroy or dispose of records (including confidential records to which ACPS does not have ready access) within five (5) years after final payment, the Contractor shall notify ACPS at least thirty (30) days prior to such disposal, and if ACPS objects, shall not dispose of the records.

12. LIEN

It is expressly agreed that after any payment has been made by ACPS to the Contractor or to any subcontractor, laborer, or any other person for work performed, or labor or material supplied under the Agreement, ACPS will have a lien upon all material delivered to the ACPS work site either by the Contractor or any subcontractor, which is to be delivered to ACPS in the performance of the Agreement.

13. PAYMENT TO SUBCONTRACTORS

For each Subcontractor, the Contractor shall take one of the following two (2) actions within seven (7) Days after it receives payment from ACPS under this Agreement:

- (i) pay the Subcontractor its proportionate share of the total payment the Contractor received from ACPS that is attributable to the work performed and materials provided by the Subcontractor; or
- (ii) notify ACPS and the Subcontractor, in writing, of the Contractor's intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment.

For each Subcontractor, the Contractor shall pay interest to the Subcontractor on all amounts the Contractor owes the Subcontractor that remain unpaid after seven (7) Days following Contractor's receipt of payment from ACPS for work performed or materials provided by the Subcontractor, except for amounts withheld from Subcontractor and for which written notice was provided to ACPS and the Subcontractor. Unless otherwise provided in these Terms and Conditions, interest shall accrue on said amounts at the rate of one percent per month.

The Contractor shall furnish to ACPS the names of all its Subcontractors and lower tier sub-subcontractors who are to perform any work or provide any materials in connection with this Agreement. The Contractor shall also furnish to ACPS federal employer identification numbers of such entities.

By appropriate agreement with each Subcontractor, the Contractor shall require each Subcontractor to include or otherwise be subject to the same payment and

interest requirements with respect to its lower-tier subcontractors.

14. WARRANTY

The Contractor shall warrant and furnish the services described herein at the times and places, and in the manner subject to the conditions set forth. The Contractor shall enter upon and complete the performance of work with the same degree of skill and care normally accepted as professional practices and procedures by members of the same profession currently practicing under similar conditions in the same locality.

All work shall be guaranteed by the Contractor against defect resulting from the use of inferior or faulty materials, or inferior or faulty workmanship, or work not in accordance with the requirements of the Agreement Documents for a two (2) year period from the date of acceptance of the work by ACPS, in addition to and irrespective of any manufacturer's warranty in accordance with the technical specifications or supplier's warranty. No date other than the date of acceptance by ACPS shall govern the effective date of the warranty, unless that date is agreed upon by ACPS and the Contractor in advance and in writing.

The Contractor shall promptly correct any defective work or materials after receipt of written notice from ACPS to do so. If the Contractor fails to proceed promptly or use its reasonable best efforts and due diligence to complete such corrections as quickly as possible, ACPS may have the materials or work corrected and the Contractor shall be liable for all expenses and costs incurred by ACPS.

Nothing in this section shall be construed to establish a period of limitation with respect to other obligations the Contractor may have under this Agreement.

15. FAILURE TO DELIVER

In case of failure to deliver goods or services in accordance with the Agreement terms and conditions, ACPS, after due oral or written notice to Contractor, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs; provided, that if public necessity requires the use of material or supplies not conforming to the specification, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by ACPS. ACPS shall be entitled to offset such costs against any sums owed by ACPS to the Contractor.

16. UNSATISFACTORY WORK

If any work done, or materials, goods, or equipment provided, by the Contractor is unsatisfactory to ACPS, the Contractor shall, on being notified by ACPS in writing, immediately remove, at the Contractor's expense, such unsatisfactory work, material, goods or equipment and replace the same with work, material, goods, or equipment satisfactory to ACPS. In the event the Contractor fails to, within fifteen (15) calendar days after the receipt of written notice, correct improper or unsuitable

work, material, goods or equipment, ACPS shall have the right, but not the obligation, to remove or replace the rejected work, material, goods, or equipment at the expense of the Contractor. This paragraph applies during the Agreement Period and during any warranty period. At its discretion, ACPS shall be entitled to offset such expense against any sums owed by ACPS to the Contractor under this Agreement. If ACPS deems expedient not to require correction or replacement of the work which has not been done in accordance with the Agreement, an appropriate adjustment to price for the specific work performed will be made as ACPS deems acceptable.

17. TERMINATION

A. Termination for Convenience

The performance of work under this Agreement may be terminated by ACPS in whole or in part whenever ACPS determines that such termination is in the best interest of ACPS. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the effective date of termination, specifying the extent to which performance of the work under this Agreement is terminated and the date upon which such termination becomes effective.

B. Termination for Cause

The Contract shall remain in force for Agreement Period and until ACPS determines that all of the following requirements and conditions have been satisfactorily met: ACPS has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Agreement Documents, including warranty and guarantee periods. However, ACPS shall have the right to terminate this Agreement sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by ACPS in its discretion.

If ACPS determines that the Contractor has failed to perform satisfactorily, then ACPS will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) business days before termination of the Agreement takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Agreement may be terminated by ACPS. Upon such termination, the Contractor may apply for compensation for services satisfactorily performed by the Contractor, allocable to the Agreement and accepted by ACPS prior to such termination unless otherwise barred by the Agreement ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the ACPS Director of Procurement within fifteen (15) business days after the expiration of the Cure Period. ACPS may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor in writing of same within a reasonable time thereafter.

C. Termination for Breach and Default

If ACPS terminates the Agreement for default or breach of any Agreement provision or condition, then the termination shall be immediate after written notice from ACPS to the Contractor (unless ACPS in its sole discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon termination pursuant to paragraphs 17.B and 17.C of this section, the Contractor shall be liable to ACPS for all costs incurred by ACPS after the effective date of termination, including costs required to be expended by ACPS to complete the work covered by the Agreement, including costs for delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed by the Contractor. Such costs shall be either deducted from any amount due to the Contractor or shall be promptly paid by the Contractor.

18. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference all Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other contractor, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

19. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia §§ 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Time for Completion specified in this Agreement. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of ACPS.

20. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Agreement if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

ACPS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of ACPS that make performance impossible or illegal, unless otherwise specified in the Agreement.

21. ANTITRUST

By entering into this Agreement, the Contractor conveys, sells, assigns and transfers to ACPS all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by ACPS under this Agreement.

22. NON-DISCRIMINATION

During the performance of this Agreement, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- C. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The contractor will include the provisions of the foregoing paragraphs 22.A, 22.B, and 22.C in every subcontract of over \$10,000, so that the provisions will be binding on each subcontractor or vendor.

23. DEBARMENT CLAUSE

The Contractor certifies that neither the Commonwealth of Virginia, nor any other jurisdiction within the United States, currently debar or prohibits them from offering the types of goods or services covered by this Agreement, nor are they an agent, employee or representative of any person or entity that is currently so debarred.

24. FAITH BASED ORGANIZATIONS

In accordance with Code of Virginia § 2.2-4343.1, ACPS does not discriminate against faith based organizations in the performance of its procurement activity.

25. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify Alexandria City School Board, and all of its elected and appointed officials, officers, current and former employees, agents, departments, schools, boards, and commissions (collectively the “ACPS” for purposes of this section) from and against any and all claims made by third parties or by ACPS for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney’s fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor’s acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Agreement Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Agreement. If, after notice by ACPS, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse ACPS for any and all expenses, including but not limited to, reasonable attorney’s fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by ACPS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Agreement.

26. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor covenants to save, defend, hold harmless, and indemnify ACPS, and all its officers, officials, departments, agencies, agents, and employees (collectively “ACPS”) from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney’s fees), charges, liability, demands or exposure, however, caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Agreement, including its use by ACPS. If the Contractor, uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that amounts paid under this Agreement includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

27. CONFIDENTIALITY

All student data is considered to be confidential under this Agreement as well as under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g et seq., and any other federal or state statutes or regulations pertaining to student records, and will only be released in accordance with the applicable laws and regulations. All student data received by the Contractor shall be maintained by the Contractor in a secure location.

The Contractor shall maintain the confidentiality of documents designated as confidential by ACPS, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Seller from establishing a claim or defense in an adjudicatory proceeding. The Contractor shall require of its Subcontractors similar agreements to maintain the confidentiality of information specifically designated as confidential by ACPS.

28. OWNERSHIP AND RETURN OF RECORDS

This Agreement confers no ownership rights to the Contractor nor any rights or interests to use or to disclose ACPS's data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of ACPS's request for services under this Agreement, are the exclusive property of ACPS ("Record" or "Records"), and all such Records shall be provided to and/or returned to ACPS upon completion, termination, or cancellation of this Agreement. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Agreement without the written consent of ACPS. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the designated by ACPS individuals. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Agreement shall be referred to ACPS for response. At ACPS's request, the Contractor shall deliver all Records to ACPS, including "hard copies" of computer records, and at the ACPS's request, shall destroy all computer records created as a result of the ACPS's request for services pursuant to this Agreement.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Agreement.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

29. ACPS EMPLOYEES

No employee of ACPS shall be admitted to any share or in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

30. RELATION TO ACPS

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the ACPS. ACPS will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. ACPS will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, ACPS will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by ACPS for its employees.

31. CERTIFICATION REGARDING SEX OFFENSES

In accordance with Virginia state law, ACPS Purchasing Procedure DJF-1 requires any contractor or his employees that will be in the presence of students during regular school hours or during school sponsored activities certify that he/she has not been convicted of any felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. Please reference the following:

<https://www.acps.k12.va.us/cms/lib/VA01918616/Centricity/Shared/documents/school-board-policies/djf.pdf>

The Contractor certifies that neither it, nor any of its employees, workers or suppliers, have been convicted of: (i) a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; or (ii) a crime of moral turpitude.

32. IMMIGRATION REFORM AND CONTROL ACT

The Contractor does not, and shall not during the performance of this Agreement; knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

33. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the ACPS Procurement Office for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Virginia Public Procurement Act, claims denied by the ACPS Procurement Office may be submitted to the ACPS Superintendent in writing no later than sixty (60) days after final payment. The time limit for final written decision by the ACPS Superintendent in the event of a contractual dispute, as that term is defined in the Virginia Public Procurement Act, is sixty (60) days. The Contractor shall not cause a delay in the Work pending any decision of the ACPS Procurement Office, Superintendent, Board, or a court of law.

34. WAIVER

ACPS's failure to insist, in any one or more instances, on the performance of any of the Contactor's obligations under the Agreement Documents, or ACPS's approval of alternatives, variances or substitutions to Contractor's obligations, shall not be construed as a waiver, modification, or relinquishment of such obligation or right with respect to future performance. Likewise, ACPS's actions or inactions shall not waive, modify or alter Contractor's responsibilities or liability under the Agreement Documents.

35. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Agreement, nothing in this Agreement or any action taken by ACPS pursuant to this Agreement shall constitute or to be construed as a waiver of either the sovereign or governmental immunity of ACPS. The parties intend for this provision to be read as broadly as possible.

36. SURVIVAL OF TERMS

In addition to any numbered sections in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Agreement also survive: INDEMNIFICATION, INDEPENDENT CONTRACTOR; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; and CONFIDENTIALITY.

37. VIRGINIA PUBLIC PROCUREMENT ACT AND ACPS POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Virginia Public Procurement Act or any applicable ACPS policy is waived in whole or in part.

38. NONEXCLUSIVELY OF REMEDIES

All remedies available to ACPS under this Agreement are cumulative, and no such remedy shall be exclusive of any other remedy available to ACPS at law or in equity.

39. SEVERABILITY

In the event any one or more of the provisions contained in the Agreement Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement Documents, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of the Agreement Documents a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of the Agreement Documents is intended to be severable.

40. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue

for any litigation with respect thereto shall be in the Circuit Court for City of Alexandria, Virginia, and in no other court. In performing the Work under this Agreement, the Contractor shall comply with applicable federal, state, and local laws, ordinance and regulations.

41. ARBITRATION

It is expressly agreed that nothing under this Agreement shall be subject to arbitration, and any references to arbitration are expressly deleted from the Agreement.

42. HEADINGS/CAPTIONS

The headings or captions used in this Agreement are inserted for convenience only and shall not be used in interpreting the same.

43. AMENDMENTS

Unless otherwise specified herein, this Agreement shall not be amended except by written amendment executed by persons dully authorized to bind the Contractor and ACPS.

44. INSURANCE, PAYMENT AND PERFORMANCE BONDS REQUIREMENTS

The Contractor shall maintain the required insurance coverage and payment and performance bonds through the completion of the Agreement, including all warranty and guarantee periods.

45. PERSONNEL AUTHORIZED TO REPRESENT THE PARTIES

Unless otherwise provided herein, all notices and other communications required by this Agreement shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, (d) emailed addressed as follows:

Contact Information for the Contractor:

Melka Marine, Inc.
3119 Burgundy Road
Alexandria, VA 22303
Attn: Leonard A. Melka, President
Phone: 703-765-3483
Email: melkamarineinc@verizon.net

Contact Information for ACPS (Project Information)

Alexandria City Public Schools
1340 Braddock Place, Suite 610
Alexandria, VA 22314
Attn: Alex Alexander, Facilities Engineer
Phone: (703) 619-8300
Email: Alex.alexander@acps.k12.va.us

Contact Information for ACPS (Legal Authorization)

Alexandria City Public Schools
Financial Services/Procurement Office
1340 Braddock Place, Suite 620
Alexandria, Virginia 22314
Attn: Meloni Hurley, Acting Director of Procurement
Phone: (703) 619-8181
Fax: (703) 619-8090
Email: meloni.hurley@acps.k12.va.us

46. FINAL AGREEMENT

The Agreement Documents represent the entire and integrated agreement between ACPS and the Contractor and supersede all prior negotiations, representations, or agreements, either written or oral, between ACPS and the Contractor concerning the subject matter of the Agreement Documents. The Agreement Documents may be amended only by a written instrument executed by an authorized representative of ACPS and Contractor.

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IN WITNESS WHEREOF, ACPS and Contractor have caused this Agreement to be executed by their duly authorized representatives.

CONSENTED and AGREED TO BY:

ALEXANDRIA CITY PUBLIC SCHOOLS

MELKA MARINE, INC.

By: _____
Anita Cordova, Director, Operations
Coordination

By: _____
Signed: Authorized Title Agent or
Principal

Date: _____

By: _____
Printed: Name of Principal or Agent

By: _____
Meloni Hurley, Acting Director of Procurement

Date: _____

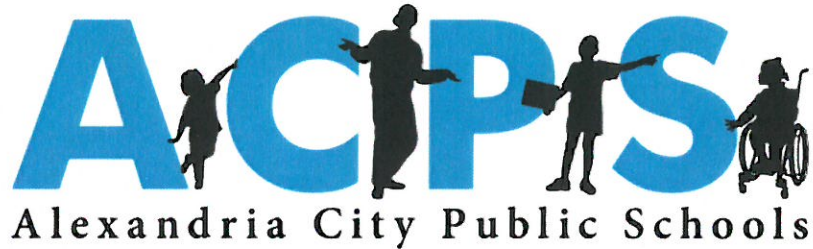
Date: _____

AS TO AVAILABLE FUNDS

By: _____
Dominic Turner, Director of Budget

CIP Account#: 41862109-7-P180054-- \$549,767.00

EXHIBIT A



BID FORM

INVITATION TO BID NUMBER 190702.

UPLOAD REQUIRED, 1 COPY ON A USB MAILED REQUIRED.

The proper Legal Name of the Business Entity submitting this response must be written in the space provided below. The Bid Form, and all other associated documents required by this Invitation to Bid shall be submitted with this Bid Form, including any addendum, for your Bid to be considered. The Form must be signed by a person authorized to legally and contractually bid the Bidder under this obligation.

SUBMITTED BY: Melka Marine, Inc.

BUSINESS ADDRESS: 3119 Burgundy Road

CITY/STATE/ZIP: Alexandria, VA 22303

TELEPHONE NO. (703) 765-3483

EMAIL ADDRESS: melkamarineinc@verizon.net

SCC ID NO.: 54-0988843

Base Bid: Project consists of providing building exterior renovations and improvements as listed in this ITB for D. Campbell Rowing Center Dock Repair and Replacement. Contractor shall coordinate the work to ensure that the facility experiences the least amount of interruption possible Lump Sum Bid, Single-Prime (All Trades) Contract: The Bidder, having carefully examined the Procurement documents, including all addendums, the specifications, the drawings, and contracting requirements, and being familiar with all conditions and requirements of the Work, hereby agree to furnish all material, labor, equipment and services, including all scheduled allowances, necessary to complete the Work for D. Campbell Rowing Center Dock Repair and Replacement for price of:

1. Base Price: Provide under the base contract all work as indicated and in summary below:

- a. Removal of existing float sections as indicated.
- b. Provide and Installation of new main launch floats, aluminum gangways, pilings, pile guides, and gangways.
- c. Provide and install all electrical as indicated to the launch float.
- d. Relocation and augmentation of the fence line as indicated.

\$ 549,767.00

The following Unit Prices are required to be considered responsive to the Bid:

List of Unit Prices

| Item | Unit | Proposed price per unit |
|---------------------------------|------|-------------------------|
| 60 foot, 12 " dia. Wood pilings | EA | \$ 4,640 |
| 40 foot, 12" dia. Wood piling | EA | \$ 2,915 |
| Float type "A" | EA | \$ 17,180 |
| Float type "B" | EA | \$ 15,365 |
| Float type "C" | EA | \$ 7,924 |

Contractor further agrees to hold the price submitted for a period not to exceed 90 days from the Bid opening date and time.

BID GUARANTEE

The undersigned Bidder agrees to execute a contract for this Work in the above amount and to furnish the Performance Surety and Payment Bond per section 19 of this ITB, within 10 days after a written Notice of Award. Failure to do so Contractor agrees to forfeit to Owner the cashier's check, certified check, U.S. money order, or bid bond for such failure, in the amount constituting five percent (5%) of the Base Bid amount above.

SUBCONTRACTORS AND SUPPLIERS

The following companies shall execute subcontracts for the portions of the Work indicated:

1. RE Lee Electric-Electrical Subcontractor
2. Expert Fence/Long Fence-Fence Subcontractor
3. Meeco Sullivan/Gator Docks-Furnish Floats / McFarland-Cascade-Furnish Pilings Timber.

Bids containing any conditions, omissions, unexplained erasures, alterations or items not called for in the bid, or irregularities of any kind, may be rejected by ACPS as being nonresponsive. No changes are to be made to the Bid Form. Any changes to a Bid Amount must be initialed by the person signing the Bid Form.

The attention of each Bidder is directed to VA Code sections 54.1-1100, et seq. which requires certain licenses for contractors, tradesmen, and others. Each Bidder is required to determine which license, if any, it is required to have under such sections. Complete the following:

Bidder does have does not have a Virginia Contractor's License.

If Bidder has a Virginia Contractor's License, circle the class Bidder has and list the number.

Licensed "Class A", "Class B", or "Class C" Virginia Contractor Number Class A. Contractor shall be registered with the Virginia State Corporation Commission (SCC), the SCC ID is 2701015371.

The undersigned hereby agrees, if this bid is accepted by the City, to provide the services and/or items in accordance with this Invitation to Bid and to execute a contract for such services and/or items.

Melka Marine, Inc.

Legal Name of Bidder

Leonard A. Melka

Authorized Signature

Leonard A. Melka, President

Print or Type Name and Title

August 22, 2018

Date

