TO: BARROSO, INC.
1727 WILSON BOULEVARD
ARLINGTON VA 22209

DATE ISSUED: January 25, 2011

CURRENT REFERENCE NO: 318-10

PRCR - OPERATE
RESTAURANT / BAR AT
ARTISPHERE

PRIOR REFERENCE NO: N/A

THIS IS A NOTICE OF AWARD OF CONTRACT

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on NOVEMBER 30, 2011.

This is the FIRST year award notice of a possible FIFTEEN year contract.

The contract documents consist of the terms and conditions of Agreement No. 318-10, including any exhibits, attached or amendments thereto.

CONTRACT PRICING:

REFER TO AGREEMENT NO. 318-10 (ATTACHED)

ATTACHMENTS:

AGREEMENT NO. 318-10

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: KAREN BARROSO
VENDOR TEL. NO.: 703-807-0840
VENDOR PAYMENT TERMS: NET 30 DAYS
VENDOR FAX. NO.: 703-820-0107
TAX IDENTIFICATION NUMBER (EIN/SSN): 54-1988643
EMAIL ADDRESS: abibyron@comcast.net

COUNTY CONTACT: MELVIN GERALD
COUNTY TEL. NO.: 703-875-1113

CONTRACT AUTHORIZATION

DATE

DISTRIBUTION

VENDOR: 1
BID FOLDER: 2

PAMELA HAYES
Assistant Purchasing Agent
THIS AGREEMENT (hereinafter “Agreement”) is made, on the date of execution by
the County, between Barroso, Inc., 1727 Wilson Boulevard, Arlington,
Virginia, 22209 (“Contractor”) a Virginia corporation authorized to do
business in the Commonwealth of Virginia, and the County Board of Arlington
County, Virginia (“County”). The County and the Contractor, for the
consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS
The contract documents consist of this Agreement, Exhibit A (Scope of Work),
Exhibit B (Sample Menu), and Exhibit C (Equipment List) (hereinafter
“Contract Documents”). Separate from this Agreement, the County will grant
the Contractor a temporary license for use of facilities, and the County and
the Contractor will enter into a Deed of Sublease subject to approval by the
owner of the property at which the Contractor will fulfill the terms of the
parties’ agreement. The Deed of Sublease will supersede the license.

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

The Contract Documents set forth the entire agreement between the County and
the Contractor regarding the Contractor’s provision of services. The license
and the Deed of Sublease shall govern the Contractor’s use and occupancy of
the premises. The County 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 Contract Documents.
The Contract Documents may be referred to herein below as the “Contract.”

2. SCOPE OF WORK
The Contractor agrees to perform the services described in the Contract
Documents (alternatively “the Work”). The primary purpose of the Work is to
operate a restaurant and bar at the Artsisphere. The Contract Documents set
forth the minimum work estimated by the County and the Contractor to be
necessary to complete the Work. It shall be the Contractor’s responsibility,
at the Contractor’s sole cost, to provide the specific services set forth in
the Contract Documents and sufficient services to fulfill the purposes of the
Work. Nothing in the Contract Documents shall be construed to limit the
Contractor’s responsibility to manage the details and execution of the Work.

3. CONTRACT TERM
The Contractor’s Work shall commence upon on the execution of this Contract
by the County, and the Work shall be completed no later than November 30,
2011 (“Initial Contract Term”), subject to any modifications as provided for
in the Contract Documents. Upon satisfactory performance by the Contractor
and with the concurrence of the Contractor, the County may, through issuance
of a formal Notice of Award executed by the County, authorize continued
operations of the Contractor under the same contract prices for four (4)
additional twelve (12) month periods from December 1, 2011, to November 30, 2015. Upon agreement by both parties, this Contract may be extended for two (2) additional five (5) year terms. (Any one of the four 12-month periods and the two 5-year periods may be referred to as a "Subsequent Contract Term").

A. The Contractor must provide a minimum of one hundred eighty (180) days advance written notice to the County if the Contractor intends not to seek an annual renewal of this Contract.

B. The County must provide a minimum of ninety (90) days notice to the Contractor if the County intends not to authorize an annual renewal of this Contract.

4. **CONTRACT AMOUNT**

   A. The Contractor shall pay twelve and one half percent (12.5%) of its gross receipts to the County as rent for the Initial Contract Term, subject to the special provisions below that pertain to the first six months of the Contractor’s performance of services pursuant to this Contract. In each Subsequent Contract Term, if gross receipts exceeded One Million Five Hundred Thousand Dollars ($1,500,000.00) in the previous year, the Contractor shall pay fifteen percent (15%) of its monthly gross receipts to the County as rent.

   B. The Contractor shall receive a One Hundred percent (100%) abatement of its rent for the first three (3) months of the Contractor’s performance of services pursuant to this Contract.

   C. Beginning in the fourth month of the Contractor’s provision of services pursuant to this Contract, rent payments shall be made monthly based on the established percentage of monthly gross receipts documented in a report by the Contractor detailing its daily gross receipts for the month and provided to the County no later than the 10th day of the following month, and shall be paid to the County by the 15th day of the following month. Beginning in the seventh month of the Contractor’s provision of services pursuant to this Contract, in neither that month nor in any subsequent month shall the monthly rent payment be less than Six Thousand Dollars ($6,000.00). This initial minimum monthly amount shall increase by three percent (3%) at the beginning of each subsequent year of this Contract (i.e. in the second year it shall be $6,180.00, etc.).

   D. The parties expressly agree that this section of the Agreement does not in any way supersede the parties’ agreements regarding rent that are contained in the license and the Deed of Sublease.

5. **PROJECT OFFICER**

   The performance of the Contractor is subject to the review and approval of the County’s Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington County Department of Parks, Recreation & Cultural Resources. It shall be the responsibility of the Contractor to manage the details of the execution and performance of its work under the Contract Documents.
6. **REIMBURSABLE EXPENSES**

No reimbursable expenses shall be claimed by the Contractor from the County, except as specifically identified in Exhibit A, section 1.C.

7. **PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor pursuant to this Contract; or

b. Notify the County and the subcontractor, in writing, of the Contractor’s intention to withhold all or a part of the subcontractor’s payment, along with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by the subcontractor pursuant to this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided in the terms of this Contract, interest shall accrue on unpaid amounts at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor’s obligation to pay an interest charge to a subcontractor pursuant to these provisions may not be construed to be an obligation of the County. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. **PROJECT STAFF**

The County will, throughout the Initial Contract Term and any Subsequent Contract Term, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the County reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor’s employees, and employees of any subcontractors, shall be solely the responsibility of the Contractor.

9. **SUPERVISION BY CONTRACTOR**

The Contractor shall at all times enforce strict discipline and good order among the workers fulfilling this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.

10. **EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

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

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex,
national origin, age, disability or any other basis prohibited by state law related 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 nondiscrimination clause.

B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the 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.

D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly- and privately-provided services and activities.

E. The Contractor will include the foregoing paragraphs in every subcontract or purchase order of more than $10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

11. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED
In accordance with § 2.2-4311.1 of the Code of Virginia, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

12. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR
During its performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than $10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Contract at which the Contractor's agents and employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance, including marijuana.

13. UNSATISFACTORY WORK
If any of the work done, or material or equipment provided, by the Contractor is unsatisfactory to the County, the Contractor shall, on being notified by
the County, immediately remove, at the Contractor’s expense, such unsatisfactory work or material or equipment and replace the same with work or material or equipment satisfactory to the County and, in the event the Contractor fails within ten (10) days after receipt of written notice to remove improper or unsuitable work or material or equipment and replace it with suitable and satisfactory work or material or equipment, the County shall have the right, but not the obligation, to remove the rejected work or material or equipment and replace it with proper work or material or equipment at the expense of the Contractor. This paragraph applies during the Initial Contract Term and any Subsequent Contract Term, and during any warranty or guarantee period. The County shall be entitled to offset such expense against any sums owed by the County to the Contractor under this Contract.

14. **TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

The Contract shall remain in force for the Initial Contract Term and any Subsequent Contract Term(s) and until the County determines that the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its sole discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will, at least fifteen (15) days before termination of the Contract occurs, give the Contractor written notice of such failure and the opportunity to cure such failure ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract will be terminated for the Contractor’s failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination, unless otherwise barred by the Contract ("Termination Costs"). Such request for Termination Costs, with all supporting documentation, must be submitted to the Project Officer within fifteen (15) days after the end of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs, and notify the Contractor of same within a reasonable time thereafter.

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

Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the work covered by the Contract, including costs of delay in completing the work or the cost of repairing or correcting any unsatisfactory or non-compliant work. Such costs shall be either subtracted from any amount due to the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County (and the County shall be entitled to recover) all damages to which the
County is entitled by this Contract or by law, including, without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

In the event any termination for cause, default or breach is found by a court of competent jurisdiction to be improper or invalid, then such termination shall be deemed to have been a termination for convenience.

15. **TERMINATION FOR THE CONVENIENCE OF THE COUNTY**
The performance of work under this Contract may be terminated by the Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County’s best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least ninety (90) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

16. **INDEMNIFICATION**
The Contractor covenants to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the “County” for purposes of this section) from and against any and all claims made by third parties or by the County 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 in performance or nonperformance of its work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to save, defend, hold harmless and/or indemnify the County, the Contractor shall be liable for and reimburse
the County for any and all expenses, including but not limited to, reasonable attorneys fees incurred and settlements or payments made.

17. **ETHICS IN PUBLIC CONTRACTING**
This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any state 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 offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase 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.

18. **COUNTY EMPLOYEES**
No employee of Arlington County, Virginia, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

19. **FORCE MAJEURE**
The Contractor shall not be held responsible for its failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond or outside the scope of the Contractor’s control that makes performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for its failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond or outside the scope of the Contractor’s control that makes performance impossible or illegal, unless otherwise specified in the Contract.

20. **AUTHORITY TO TRANSACT BUSINESS**
The Contractor shall remain authorized to transact business in the Commonwealth of Virginia during the Initial Contract Term and any Subsequent Contract Term of this Contract.

21. **RELATION TO THE COUNTY**
The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.
22. **ANTITRUST**
By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County 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 the County under this Contract.

23. **INTELLECTUAL PROPERTY INDEMNIFICATION**
The Contractor warrants and guarantees that no intellectual property rights (including copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor covenants to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney’s fees), charges, liability, 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 Contract, including its use by the County. If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the Work.

24. **COPYRIGHT**
The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the County all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the County may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the County by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor’s remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this “Copyright” paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless the County approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

25. **OWNERSHIP, CONFIDENTIALITY, AND RETURN OF RECORDS**
This Contract confers no rights of ownership to the Contractor, nor does it convey any rights to use or disclose the County’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 the County's request for services under this Contract, are the exclusive property of the County ("Record" or "Records"), and all such Records shall be provided to and/or returned to County upon completion, termination, or cancellation of this Contract. 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 Contract without the written consent of the County. Additionally, 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 Project Officer or designee. 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 Contract shall be referred to the Project Officer or designee for response. At the County's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the County's request, shall destroy all computer records created as a result of the County's request for services under this Contract.

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 Contract.

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

26. REPORT STANDARDS
Reports or written material prepared by the Contractor in response to the requirements of this Contract shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with the Contract requirements shall be borne by the Contractor.

When submitting documents to the County, the Contractor shall comply with the following guidelines:

• All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
• All copies shall be double-sided;
• Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
• The use of plastic covers or dividers should be avoided; and
• Unnecessary attachments or documents not specifically asked for should not
be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

27. **AUDIT**
The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment, or until audited by the County, whichever is sooner. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) after the County’s audit but within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

28. **ASSIGNMENT**
The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any or all of its rights, obligations, or interests under this Contract without the prior written consent of the County. The Contractor expressly acknowledges, by its signature below, that it is aware that the County intends to assign operations of the Artisphere to a third-party entity in the future, potentially during the term of this Contract. The Contractor covenants and agrees that the County is free to assign any and all aspects of this Contract, including the County’s responsibilities and benefits hereunder, to any third party without any prior consent from the Contractor to that assignment.

29. **AMENDMENTS**
This Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

30. **ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**
Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

31. **DISPUTE RESOLUTION**
The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, incorporated herein by reference, and available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court of law.

32. **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 of Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with all applicable federal, state and local laws, ordinances and regulations.
33. **ARBITRATION**
It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

34. **NONEXCLUSIVITY OF REMEDIES**
All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

35. **NO WAIVER**
The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

36. **SEVERABILITY**
The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

37. **NO WAIVER OF SOVEREIGN IMMUNITY**
Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

38. **SURVIVAL OF TERMS**
In addition to any sections in this Contract which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections, if included in this Contract, also survive: INDEMNIFICATION; RELATION TO COUNTY; CONFIDENTIALITY AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; and WARRANTY.

39. **HEADINGS**
The section headings in this Contract are inserted only for convenience and are not to be construed as part of this contract or a limitation on the scope of the particular section to which the heading refers.

40. **NOTICES**
Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an over night or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO THE CONTRACTOR:**

Karen Barroso
Barroso, Inc.
1727 Wilson Boulevard
Arlington, Virginia 22209

TO THE COUNTY:

The County Project Officer (refer to section headed Project Officer under the Contract Terms and Conditions section (Contractor shall request address from Project Officer)

AND

Richard D. Warren, Jr., Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

41. NON-DISCRIMINATION NOTICE
Arlington County does not discriminate against faith-based organizations.

42. INSURANCE REQUIREMENTS
The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to the County. The minimum insurance coverage shall be:

a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of $100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.

b. Commercial General Liability - $1,000,000 combined single limit coverage with $2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

c. Business Automobile Liability - $1,000,000 Combined Single Limit (Owned, non-owned and hired).

d. The Contractor shall carry liquor liability insurance in the amount of $1,000,000 (one million dollars) per occurrence and $2,000,000 (two million dollars) annual aggregate.

e. Additional Insured - "Arlington County, its officers, elected and appointed officials, employees, and agents", "1101 Wilson Owner, LLC", "Monday Properties Services, LLC", and "KeyCorp Real Estate Capital Markets, Inc. d/b/a KeyBank Real Estate Capital as Master Servicer in trust for Bank of America, National Association, successor by merger to LaSalle Bank National Association, as trustee for the registered holders of LB Commercial Mortgage Trust 2007-C3, Commercial Mortgage
Pass-Through Certificates, Series 2007-C3" shall be named as additional insureds in the Contractor's Commercial General Liability policy and Intellectual Property policy; evidence of the Additional Insureds endorsement shall be typed on the certificate.

f. Cancellation - All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation or non-renewal until thirty (30) days prior written notice has been given to the Purchasing Agent, Arlington County, Virginia." If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced consistent with the terms of this Agreement, and the County notified of the replacement, in such a manner that there is no lapse in coverage.

g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Agreement, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.

h. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of deductible applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, or that funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County immediately upon request.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the Work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work.
contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted Work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the alternative coverage is submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self insurance resolution to determine the adequacy of the insurance funding.

43. **CONSTRUCTION OF THE CONTRACT IN RELATION TO THE DEED OF SUBLEASE**

In the event that any Contract term is inconsistent with any term of the County's license or the parties' Deed of Sublease, the term of the license or Deed of Sublease shall prevail over the term of the Contract to the extent that the license or Deed of Sublease addresses the use of the subleased Premises and not the provision of services pursuant to the parties' Contract.

The following sections of this Agreement are to be read as in addition to, and not in lieu of, any provisions of the Deed of Sublease: 3 and 5 through 15, 17 through 28, 30 and 31, 33 and 34, 38 and 39, and 41.

**WITNESS these signatures:**

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

[Signature]

NAME AND RICHARD D. WARREN, JR. TITLE: PURCHASING AGENT DATE: 1/25/11

BARROSO, INC.

TAXPAYER ID: 54-1988643

[Signature]

NAME AND Karen Barroso TITLE: President DATE: 12/21/10
Agreement No. 318-10
Exhibit A

SCOPE OF SERVICES

Scope of Work for operating a restaurant and bar at the Artisphere (1101 Wilson Boulevard, Arlington, Virginia).

I. General

A. The Contractor will be the sole operator of the restaurant and bar and shall have exclusive use of the main kitchen, main bar, and beer storage area.

B. The County agrees that the Contractor will, during the term of this Contract, have full use of the kitchen, bar, and beer storage areas, in the condition in which they are on the date this Contract begins.

C. The County agrees to reimburse (upon receipt by the County of a verifiable invoice showing the Contractor's full payment) the Contractor an amount not to exceed Thirty-five Hundred Dollars ($3,500.00) for the purchase and installation of a "griddle" cooking appliance to supplement what is already provided.

C. In addition to its operation of the restaurant, the Contractor will provide food and beverage services via kiosk or portable equipment in other areas of Artisphere and the Rosslyn Spectrum Theatre (1611 N. Kent Street) to directly serve patrons during intermissions and at large programmed (non-catered) events using other spaces such as the Blackbox Theatre, Ballroom and/or visual arts gallery. Frequently, more than one portable service will be needed as well as the simultaneous ongoing operation of the restaurant and bar. Service locations and times must be arranged with and approved by Artisphere Facility Manager or his or her designee.

D. The Contractor shall choose the name for the restaurant with input from the County. The Contractor shall be responsible for any trademark, legal searches, opinions, filings and registrations. The Contractor shall retain ownership of the name, unless "Artisphere" is part of the name, in which case the Contractor shall forfeit the right for any future or expanded use of the name beyond the Artisphere facility. In order to use the word "Artisphere" in the name of its restaurant, the Contractor must obtain prior written permission for that use and will be subject to a revocable license allowing use of the name.

E. The Contractor will be provided with space for one exterior sign (lighted, 4' x 14"), defined as Sign S5 in the approved Comprehensive Sign Plan for the Artisphere. Interior directional wayfinding will also be provided as appropriate by the County.

F. Marketing materials produced by the County for the Artisphere may include mention of the restaurant through the use of the Artisphere logo or other agreed-upon graphics.

G. The Contractor will be placed on a list of preferred caterers for all Artisphere events. Renters of Artisphere spaces who require food and
beverage services will generally be required to choose from this list of preferred caterers.

H. As noted in section 43 of the Agreement, the Contractor shall obtain a license from the County, and subsequently enter into a Deed of Sublease with the County, for the kitchen, bar space and beverage cooler in the Artisphere. The license and the Deed of Sublease shall be on the County's standard forms and shall be subject and subordinate to the County's lease of the Artisphere space from the property owner.

II. Contractor Requirements

A. The Contractor shall provide a full range of menu offerings of unique, varied, and casual food in a moderate price range to give diners light to full meal options. A sample menu, attached as Exhibit B, is representative of the types of choice and prices that will be offered to customers. Future changes to the menu that substantially alter the types of food choices or represent more than inflationary adjustments to prices shall be discussed in advance by the Contractor with the Project Officer.

B. Full-service alcoholic beverage offerings shall provide patrons a variety of beer, wine and cocktail choices at multiple price points.

C. The Contractor shall manage a full-service restaurant seven days a week during Artisphere operating hours. The Artisphere's planned operating hours are from 11:00 a.m. until 12:00 midnight from Sunday through Thursday, and 11:00 a.m. until 2:00 a.m. on Friday and Saturday. Prior to making any changes to these hours, the Project Officer will consult with the Contractor. If the Contractor desires to make any changes to its operating hours, these changes must be made in writing, and are subject to approval by the Project Officer. The Contractor shall impose reasonable "last call" hours and policies.

D. The Contractor shall determine and provide, after consultation with the Project Officer, the method of food service delivery to patrons ranging from self service to table service or some combination.

E. The Contractor will offer concession-style food and beverage services via kiosk or portable bar set-up in other areas of the Artisphere and the Rosslyn Spectrum to directly serve patrons during intermissions and at large programmed events using other spaces such as the Blackbox Theatre, Ballroom and/or visual arts gallery. These activities may occur simultaneously and while the restaurant is in full operation.

F. The Contractor shall be solely responsible for designing, constructing and paying for all Contractor-desired alterations to the restaurant, bars, equipment, and facilities which are both necessary and reasonable, and which have been requested and explained to the County in writing, and approved in advance by the Project Officer in writing. The Contractor shall be solely responsible for any and all damages caused during the course of any and all Contractor-desired alterations.

G. The Contractor shall provide to the County a food allowance of up to four thousand dollars ($4,000.00) per year for guest artists and performers and others as approved by the Executive Director of the Artisphere. This annual amount shall increase by three percent (3%)
each year at the beginning of the annual renewal period (i.e. in the second year it shall be $4,120.00, etc.). A system of redeemable food coupons or vouchers will be developed with Artisphere staff to manage this process. This food allowance shall be separate and apart from the rent owed by the Contractor to the County pursuant to the parties’ Agreement.

H. The Contractor shall maintain throughout the Initial Contract Term and any Subsequent Contract Term the following:
   a. Proof of registration of the Contractor’s business entity in good standing from the Virginia State Corporation Commission
   b. Valid Food Service Permit issued by the Arlington County Public Health Division
   c. Arlington County Business License
   d. Virginia ABC License (as required to operate as defined by the terms of this Contract and the laws of Virginia)
   e. Certificate of Insurance Complete insurance requirements are listed in paragraph 42 of the Agreement.

I. The Contractor shall be responsible for business operating expenses, including, but not limited to: insurance, telephone, internet, licenses, and permits.

J. The Contractor shall supply all portable stands including the furniture fixtures and equipment required for proper operation.

K. The Contractor shall provide menu boards, printed menus, guest checks, hardware and software for operations, tracking and supplies.

L. The Contractor shall supply serving pieces including chafing dishes and any props, china, glassware, silverware, barware, and any rolling stock that may be required for operation.

M. The Contractor shall provide a Bag-N-Box Soda System (or equivalent), soda guns, keg racks in the beer storage room, and pots, pans, dishes, utensils, glassware, paper goods, kitchen/cleaning supplies, etc.

N. The Contractor shall provide an on-site General Manager or Director of Operations to work with Artisphere facility and operations staff. The Contractor’s selection for the position of Manager will be subject to the advance approval of the Project Officer. The Contractor must select, hire, and train all required service, line, bus, and culinary personnel. See section 8, Project Staff, of the Agreement.

O. The Contractor shall be responsible for repair and maintenance of kitchen equipment and life-cycle replacement of kitchen equipment. A list of kitchen equipment is attached hereto as Exhibit C to the Agreement.

P. The Contractor shall maintain all equipment and small wares used in performance of its duties in a good state of repair, including maintenance or repair necessitated by ordinary wear and tear.

Q. The Contractor shall be responsible for keeping clean, polished and in good repair all bars, equipment, and other facilities, either permanent or temporary, as are used by it in performance of the Contract.
R. The Contractor shall maintain all food and beverage facilities in a clean and sanitary condition in accordance and consistent with all applicable rules, codes, and requirements of local, state and federal law.

S. The Contractor shall be responsible for cleanliness in the restaurant and Town Square area and for bussing of tables in the Town Square area (two levels) as well as in the immediate area of portable serving stations or kiosk set-ups. The Contractor shall empty trash receptacles in the Town Square area (two levels) and bring kitchen- and patron-generated trash to the property’s Dumpsters.

T. The Contractor shall hire and supervise exterminators to control vermin and pests as necessary. Such extermination services shall be supplied in all areas where food is prepared, dispensed or stored.

U. The Contractor shall develop with the Project Officer a written clean-up, maintenance and repair schedule to be adhered to by the Contractor. Updates will be done as needed.

V. The Contractor shall be responsible for securing directly from the building’s owner or parking lot operator any desired staff parking spaces in the building’s parking lot.

W. The Contractor shall receive all restaurant deliveries in accordance with Artisphere and building owner operating rules and policies, which will be provided to the Contractor by the Project Officer.

X. The Contractor shall actively participate in regularly scheduled building user group meetings facilitated by the Project Officer to provide updates, discuss, and give feedback. The Contractor shall also submit incident reports in the timeframe and in the format required by the Project Officer.

Y. In addition to providing verifiable monthly gross receipt documentation, the Contractor shall also report business volume information to the County. The format and frequency of this reporting shall be jointly developed by the Contractor and the Project Officer.
Café at Artsphire - Draft Menu - December 2010

Agreement No. 318-10
Exhibit B
Sample Menu

Starts
7.00-12.00
Green Chorizo with guacamole and salsa verde
Lamb Meatballs with tzatziki sauce
Fried Risotto Balls
Olives, Roasted Nuts, Aged Gouda
Duck Confit with Arugula
Micro-Greens with pear, spiced walnut, Gorgonzola
Aged Virginia Country ham with dried peaches soaked in aged rum
Pan Roasted Oysters with apple vinaigrette
Fried Mac n' Cheese balls
Pan Fried Tomatillos with jalapeno crème fraiche
Somosas stuffed with lamb and potato, peach chutney
Bruschetta du jour
Slider du jour (Bratwurst Sliders with apple/cabbage sauerkraut)

Plates
12.00-24.00
Gourmet Grilled Cheese
Trio of Sliders - buffalo, elk, pork
House made ricotta spinach Gnocchi, house canned tomatoes
Fish Tacos - house-made tortilla’s, signature sauce
Miitaki Risotto with julienned green beans, truffle oil
Duck Confit - white bean, carrot, arugula
Carnitas - Duck, Beer Can Chicken, Roasted Pork

Pizza
11.00-14.00
House - caramelized onion, roasted bacon, kale, Romano
Margharita - tomato, basil, mozzarella
Sausage - tomato, onion, pecorino
Chef’s design du jour

Desserts
5.00-7.00
Chocolate Pudding Cake
Banana Bread Pudding
Apple Turnover
Frozen Custard
Glace du jour

Note: this represents a sample of what might be offered. It is drawn from a much larger list of potential items that are being considered. Items will change pending taste tests, refining of the recipes, and verification of the supply-chain for the ingredients.
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