



# CITY COUNCIL AGENDA REPORT



**DEPARTMENT:** Community Services

**MEETING DATE:** April 16, 2024

**STAFF REFERENCE:** Tina Cherry, Director

**AGENDA LOCATION:** AR-3

**GOVERNMENT CODE SECTION 84308 APPLIES:** Yes

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**TITLE:** Exclusive Franchise Agreement with Raw Inspiration, Inc., to Operate the Monrovia Farmers Market at Station Square for the Period Ending June 30, 2029, with Five (5) One-Year Options to Extend

**OBJECTIVE:** To approve an Exclusive Franchise Agreement with Raw Inspiration, Inc. (Raw Inspiration), to manage the Monrovia Farmers Market at Station Square (Farmers Market)

**BACKGROUND:** Since development of Station Square Park, the City has worked to improve use of the park to increase activities, events, and programs in the area. The City hosts special events and activities in the area as a way to “Populate the Park” and increase community vibrancy, particularly at a time with the Station Square Transit Village is under construction. The area surrounding Station Square Park is developing with hundreds of new residents moving near the transit village. This area has limited access to healthy food options and Station Square Park is currently the only recreation space for residents in southern Monrovia. Finding unique ways to meet the community needs is a priority for the Council.

Additionally, the City has experienced an increase in illegal activity at Station Square Park when activities and events are not occurring. Staff has been developing many options for new events and programs in the area. Examples of programs already underway include authorization for a second Community Garden, enhanced schedule of performances for our Summer Concerts in the Park series, and the addition of law enforcement security cameras in the park.

Future goals also include securing a tenant for the historic Santa Fe Depot, hosting new special events for businesses and entrepreneurs, and renovating Station Square Park as major construction activities come to completion.

Over the years, the City has received numerous requests from residents to host a Farmer’s Market in Monrovia where healthy produce, home-baked goods and pre-packaged meals can be offered.

**ANALYSIS:** One of the City’s longtime community partners, Raw Inspiration, has hosted the weekly Friday Night Street Fair since the summer of 2016. Raw Inspiration continuously meets or exceeds the City’s expectations for our event which draws thousands of participants every week. The Raw Inspiration Team is proactive, accessible and innovative, and they manage several farmers markets throughout Los Angeles and surrounding communities. They are a Certified Farmers Market Operator and have extensive relationships with local farmers and artisanal food services. To that end, the City and Raw Inspiration have been discussing a Monrovia Farmers Market concept for City Council consideration.

The City utilizes a franchise agreement for our Friday Night Street Fair and would recommend a separate, but similar, agreement for the Monrovia Farmers Market if approved by Council. Key terms included in the proposed Agreement would include language as follows:

- Raw Inspiration will select a date to launch the Monrovia Farmers Market at Station Square. Raw Inspiration could begin as early as Memorial Day Weekend which would be Saturday, May 25, 2024.
- The Market would operate every Saturday from 9:00am to 2:00pm.
- The Term would be an initial five-year term, and up to five (5) one-year extensions that can be offered at the City's sole discretion.
- During the first year, the City would only be able to terminate the Agreement if Raw Inspiration is found to be in material breach of the contract. Beginning on July 1, 2025, the City shall have the right to terminate the Agreement at any time for any reason or no reason.
- An Oversight Committee shall monitor the general performance and operation of the Farmers Market. The Oversight Committee would consist of the City Manager or designee, and one representative from each of the following City operations: Community Services Department, Public Works Department, and Monrovia Police Department.
- Raw Inspiration has always given priority to Monrovia based businesses for the Street Fair and would desire to do the same for all Monrovia based businesses or vendors desirous to participate in the Farmer's Market.
- The Farmers Market would strive to provide the following vendor mix:
  - A minimum 75% of the vendors will be engaged in the sale of fruits, vegetables, flowers, fish, baked goods, and quality, prepared foods to go.
  - The remainder of the market may accommodate a number of different users, and the Franchisee commits to working to attract "artisan quality" craft food vendors.
- Raw Inspiration will provide live entertainment at the Farmers Market on holidays and monthly Kid Days.
- Raw Inspiration shall work with the City to explore a weekly Beer Garden at the Farmers Market, highlighting Monrovia brewers.
- Raw Inspiration will be required to keep the Farmers Market clean and maintained, and also will provide the required number of toilets, including toilets that are ADA compliant.

Should the Council desire to host a weekly Farmer's Market at Station Square Park, Staff recommends approval of the Agreement with Raw Inspiration for management of the Monrovia Farmers Market at Station Square.

It should also be noted that the City Manager's Office is working with Metro to reach an agreement to secure additional parking at the Metro Parking Garage for residents and patrons of the Farmer's Market and City sponsored weekend events such as the Summer Concerts in the Park.

**ENVIRONMENTAL IMPACT:** None.

**FISCAL IMPACT:** There is no direct Cost to the City for operation of the Farmer's Market. Similar to how the Friday Night Street Fair operates, vendors pay fees directly to Raw Inspiration and all expenses are paid by Raw Inspirations.

**OPTIONS:** The following options are presented for City Council consideration:

1. Approve the Exclusive Franchise Agreement with Raw Inspiration for the operation of the Monrovia Farmers Market at Station Square for the period ending June 30, 2029, with five (5) one-year options to extend.
2. Reject the agreement with Raw Inspiration and provide staff with additional direction.

**RECOMMENDATION:** Staff recommends that the City Council select Option 1, thereby approving the Exclusive Franchise Agreement with Raw Inspiration for the operation of the Monrovia Farmers Market at Station Square.

**CITY COUNCIL ACTION REQUIRED:** If the City Council concurs, the appropriate action would be a motion to approve the Exclusive Franchise Agreement with Raw Inspiration, Inc., for operation of the Monrovia Farmers Market at Station Square for the period ending June 30, 2029, with five (5) one-year extensions, and authorize the City Manager to execute the necessary documents in a form approved by the City Attorney.

## EXCLUSIVE FRANCHISE AGREEMENT

This Exclusive Franchise Agreement (“Agreement”) is dated April 16, 2024 (“Effective Date”), and is between the City of Monrovia, a California municipal corporation (City) and Raw Inspiration, Inc., a California 501(c)3 non-profit organization (Franchisee).

### RECITALS

A. City has determined that a hosting a weekly Farmers Market at Station Square (Event) that is open and available to residents and visitors enhances the community’s quality of life.

B. City desires to utilize the services of Franchisee as an independent contractor for the production of the weekly Event at Station Square Park in Monrovia.

C. City has determined that the Event will bring needed service to the growing Station Square community.

D. City has determined that the Event will enhance the safety of the park by offering more activity and draw more pedestrians to populate the space.

E. Franchisee represents that it is fully qualified to develop, coordinate, and produce the weekly Event, as set forth in the Scope of Services (**Exhibit A**).

Based on Franchisee’s representation of its qualifications to develop, coordinate, and produce the Event, City desires to retain Franchisee and Franchisee desires to serve City to perform these services in accordance with the terms and conditions of this Agreement. The parties therefore agree to as follows:

#### 1. Franchisee’s Services.

A. Scope of Services. Franchisee shall perform the services described in the Scope of Services, attached as **Exhibit A**. City may request, in writing, changes in the scope of services to be performed at any time within the Term of this Agreement (as defined herein). Any changes to any term must be mutually agreed upon by the parties, by duly-approved written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the Community Services Director, or such other person designated in writing by the Director (the City Representative). For the purposes of this Agreement, the Franchisee Representative shall be Melissa Farwell and Katie Rogers (Franchisee Representatives). The Franchisee Representative shall directly manage Franchisee’s services under this Agreement. Franchisee shall not change the Franchisee Representatives without written notification to the City.

C. Time for Performance. Franchisee shall commence using the franchise to produce the Event beginning on Saturday, May 25, 2024 and shall perform all services by the deadlines established by the City Representative.

D. Standard of Performance. Franchisee shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner deemed satisfactory to City.

E. Personnel. Franchisee will secure at its own expense, all personnel required to perform the services required under this Agreement. All of the services required under this Agreement shall be performed by Franchisee or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

F. Compliance with Laws. Franchisee shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements applicable to this Agreement.

G. Permits and Licenses. Franchisee shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

H. Term of Agreement. The term of this Agreement shall be from the Effective Date through June 30, 2029 (the "Initial Term"), unless terminated earlier as provided herein. City, at City's sole and absolute discretion, may offer up to five (5) one (1) year extensions of this Agreement (individually, an "Extended Term"). Any such extension offered by the City must be presented to the Franchisee in writing within sixty (60) days of the Initial Term or then current Extended Term, as the case may be. Franchisee shall accept in writing any such extension within thirty (30) days of City's offer, or the offer will expire and this Agreement shall terminate at the expiration of the Initial Term or then current Extended Term, as the case may be.

2. **Oversight Committee.** An Oversight Committee shall monitor the general performance and operation of the Farmers Market. The Oversight Committee shall consist of the City Manager or designee, and one representative from each of the following City operations: Community Services Department, Public Works Department, and Monrovia Police Department. The Oversight Committee shall meet as needed, but not less than once annually, to consider a range of topics including but not limited to the overall aesthetic of the Event, the quality of the fruits and vegetables offered at the farmers' market, entertainment and music, sponsored events, and the log of complaints and other matters of concern related to customer service. The Oversight Committee shall also act as a grievance committee for any Event related complaints. It shall be the duty, obligation and responsibility of the Franchisee to attend and participate in each meeting.

**3. Annual Presentation.** Franchisee shall provide an Annual Presentation in January of each year to the City. The Annual Presentation should provide a comprehensive overview detailing various aspects of the Franchisee's operation of the Event, including any proposed adjustments for improving the overall Event moving forward.

**4. Exclusive Franchise.**

A. Grant of Exclusive Franchise. The City hereby grants to Franchisee, subject to the terms and conditions set forth herein, the exclusive right and privilege to utilize the public right-of-ways located within the Franchise Area to produce the weekly Event (the "Exclusive Franchise"). Franchisee's use of the public right-of-ways shall comply with and be in conformance with all applicable laws, statutes, ordinances and rules including, without limitation, health and safety standards and employment laws. All use of public right-of-ways must be stated in writing by Franchisee prior to the Event commencing, after which any changes to the use of public right-of-ways must be submitted in writing to the City and such changes shall not be made until Franchisee has received City's written approval.

B. Acceptance of Exclusive Franchise. By its acceptance and execution of this Agreement, Franchisee accepts the Exclusive Franchise granted by the City subject to the terms and conditions contained herein and agrees to perform all of the duties and obligations set forth in this Agreement.

C. Franchise Area. As illustrated in **Exhibit B**, the Franchise Area shall mean those public rights-of-way within and adjacent to Station Square Park upon which the Event shall be produced. A map of the Franchise Area is attached as **Exhibit B** and hereby made part of this Agreement. City, at City's sole discretion, reserves the right to amend the Franchise Area at any time during the term of this Agreement, pursuant to the notification requirement contained in this Agreement. Should the City exercise this right, City and Franchisee shall meet and confer on specified Contract Services.

D. Change of Franchise Area Boundaries. City shall provide not less than sixty (60) days written notice to Franchisee prior to exercising its right to alter the boundaries of the Franchise Area. During this sixty day notification period, City and Franchisee shall meet and confer in good faith to address any issues arising from or related to the alteration of the Franchise Area, and the parties shall execute an amendment to this Agreement setting forth the revised boundaries of the Franchise Area and any terms or conditions that were modified as a result of the parties negotiations. In the event that City and Franchisee cannot reach agreement on such issues, and an amendment is not executed by the parties, this Agreement shall automatically terminate at the end of the sixty-day notification period, unless such period is extended by written mutual agreement.

E. City-owned Parking Lots. Though weekly Event patrons and vendors may use City-owned parking lots, including the Station Square Park parking lot, Franchisee

and vendors shall not use City-owned parking lots for staging or production of the weekly Event.

F. Encroachment Permit. Franchisee shall obtain a no-fee Encroachment Permit from the City for operation of the Event within the public right-of-way. The Encroachment Permit shall automatically renew for each year that the Franchisee is engaged to develop the Event. The Encroachment Permit shall be made a part of this Agreement and is incorporated herein by this reference.

G. Permits & Licenses. Franchisee shall obtain in advance any and all permits and approvals required by the City and any other governmental agency required for the operation of the Event. Permits and approvals shall include, but are not limited to, the permit to serve food from temporary food booths issued by the Los Angeles County Department of Health Services. Franchisee, as holder of the Exclusive Franchise granted herein, shall be responsible for enforcing among Event Vendors and Food Booth Vendors any and all guidelines, laws, codes, and regulations required by law.

H. Corporate Status & Authorization. Franchisee warrants and represents that Franchisee is and shall remain a corporation duly organized, validly existing and in good standing under the laws of the State of California for the period of time of this Agreement. Franchisee further warrants and represents that Franchisee is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement. Further, Franchisee warrants and represents that it has the authority to enter into and perform its obligations under this Agreement, and that the person executing this Agreement on behalf of Franchisee is authorized by the Board of Directors and bylaws of Raw Inspiration, Inc., to do so. This Agreement constitutes the legal, valid and binding obligation of Franchisee, enforceable against Franchisee in accordance with its terms, and as defined herein.

I. Each party is not obligated to provide monetary compensation to the other, The City's consideration for entering into this agreement is Franchisee's agreement to organize and present the Farmer's Market as described herein, for the benefit of the City and its residents but at no cost to the City. Franchisee's consideration for its performance under this obligation will be through its receipt of vendor fees. Each party hereby acknowledges the adequacy of consideration.

## **5. Franchisee Obligations.**

A. Implementation of an Integrated Event Marketing Plan. Franchisee commits to developing for City approval, and then implementing, a fully integrated marketing plan to promote the Event. The integrated event marketing plan shall include, but not be limited to, the following components:

- i. Developing mechanisms through which the Event can be marketed, including expansion of the Event's social media presence, development of marketing materials for inclusion in City publications, partnerships with other community organizations, and other related activities.
- ii. Integrating appropriate themes (e.g., Holiday Theme in December, etc.) within the Event during various times of the year.
- iii. Developing and integrating entertainment options for inclusion throughout the Event, including the use of live bands, performances, and other related activities.

**6. Independent Contractor.** Franchisee is, and shall at all times remain as to City, a wholly independent contractor. Franchisee shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Franchisee or any of Franchisee's employees, except as set forth in this Agreement. Franchisee shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

**7. Concept Ownership.** Franchisee and City agree that the Station Square Farmers Market is a concept developed, enhanced, and owned by the City. In granting this Franchise to Franchisee to produce the Event, it is not the intent of the City to transfer any ownership, right, or title to the Event to the Franchisee except as specifically granted herein. The City shall have the sole discretion to determine whether the Event continues following the termination or expiration of this Agreement. Furthermore, should this Agreement expire or be terminated, Franchisee agrees that Event related logo, signage, social media accounts, and website are property of the City. Notwithstanding the foregoing, Franchisee shall with City approval have the license to use the name of the Event for marketing and public relations purposes.

**8. Confidentiality.** All data, documents, discussion, or other information (collectively "data") developed or received by Franchisee or provided for performance of this Agreement are deemed confidential. Franchisee shall keep all data confidential and shall not disclose any data to any person or entity without City's prior written consent. City shall grant such consent if disclosure is legally required. Franchisee shall return all data to City upon the expiration or termination of this Agreement. Franchisee's covenant under this Section 8 shall survive the expiration or termination of this Agreement.

**9. Conflicts of Interest.** Franchisee and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Franchisee's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Franchisee may perform similar services for other clients, but Franchisee and its officers, employees, associates and subcontractors shall

not, without the City Representative's prior written approval, perform work for another person or entity for whom Franchisee is not currently performing work that would require Franchisee or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Franchisee shall incorporate a clause substantially similar to this Section 9 into any subcontract that Franchisee executes in connection with the performance of this Agreement.

## **10. Indemnification.**

### **A. Indemnities for Third Party Claims.**

1) To the fullest extent permitted by law, Franchisee shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Franchisee, its officers, agents, servants, employees, subcontractors, material, contractors or their officers, agents, servants or employees (or any entity or individual that Franchisee shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Franchisee shall defend the Indemnitees in any action or actions filed in connection with any Liability with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Franchisee shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Franchisee shall pay all required taxes on amounts paid to Franchisee under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Franchisee shall fully comply with the workers' compensation law regarding Franchisee and Franchisee's employees. Franchisee shall indemnify and hold City harmless from any failure of Franchisee to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Franchisee under this Agreement any amount due to City from Franchisee as a result of Franchisee's failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph A. 2).

3) Franchisee shall obtain executed indemnity agreements with provisions identical to those in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Franchisee in the performance of this Agreement. If Franchisee fails to obtain such indemnity obligations, Franchisee shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Franchisee's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Franchisee's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

B. Workers' Compensation Acts not Limiting. Franchisee's indemnifications and obligations under this Section 10, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Franchisee expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Franchisee because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 10 shall apply regardless of whether or not any insurance policies are determined to be applicable to the liability, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Franchisee's indemnifications and obligations under this Section 10 shall survive the expiration or termination of this Agreement.

## **11. Insurance.**

A. Minimum Scope and Limits of Insurance. Franchisee shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000) per project or location. If Franchisee is a limited liability company, the commercial general liability coverage shall be amended so that Franchisee and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage. If Franchisee does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Franchisee shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 11.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Franchisee has no employees while performing services under this Agreement, workers' compensation policy is not required, but Franchisee shall execute a declaration that it has not employees.

B. Acceptability of Insurers. The insurance policies required under this Section 11 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section 11.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 11 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Franchisee's insurance and shall not contribute with it.

E. Franchisee's Waiver of Subrogation. The insurance policies required under this Section 11 shall not prohibit Franchisee and Franchisee's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Franchisee hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by City. At City's option, Franchisee shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Franchisee shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Franchisee shall not cancel, reduce or otherwise modify the insurance policies required by this Section 11 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to City. If any insurance policy required under this

Section 11 is canceled or reduced in coverage or limits, Franchisee shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Franchisee does not maintain the policies of insurance required under this Section 11 in full force and effect during the term of this Agreement, or in the event any of Franchisee's policies do not comply with the requirements under this Section 11, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Franchisee's expense, the premium thereon. Franchisee shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Franchisee.

I. Evidence of Insurance. Prior to the performance of services under this Agreement, Franchisee shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 11. The endorsements are subject to City's approval. Franchisee may provide complete, certified copies of all required insurance policies to City. Franchisee shall maintain current endorsements on file with City's Risk Manager. Franchisee shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Franchisee shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Franchisee shall not be construed as a limitation of Franchisee's liability or as full performance of Franchisee's duty to indemnify City under Section 10 of this Agreement.

K. Subcontractor Insurance Requirements. Franchisee shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 11.

## **12. Mutual Cooperation.**

A. City's Cooperation. City shall provide Franchisee with all pertinent data, documents and other requested information as is reasonably available for Franchisee's proper performance of the services required under this Agreement.

B. Franchisee's Cooperation. In the event any claim or action is brought against the City relating to Franchisee's performance or services rendered under this Agreement, Franchisee shall render any reasonable assistance that City requires.

**13. Records and Inspections.** Franchisee shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of five (5) years. Franchisee shall, without charge, provide City with access to the records during normal

business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

#### **14. Termination of Agreement.**

A. Right to Terminate. From the Effective Date of this Agreement through June 30, 2025, City shall only be able to terminate this Agreement if Franchisee is determined to be in material breach of any term of this Agreement. However, beginning on July 1, 2025, the City shall have the right to terminate this Agreement at any time for any reason or no reason. If the City elects to terminate the Agreement on or after July 1, 2025, the City shall provide the Franchisee with at least ninety (90) days of advance notice.

B. Franchisee may terminate this Agreement at any time for any reason or no reason, after giving written notice to City at least one-hundred and eighty (180) calendar days before the termination is to be effective, and continuing to perform during the notice period.

C. Obligations upon Termination. Franchisee shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In no event shall City be liable to Franchisee for any lost revenue, lost profits, anticipated profits, penalties of any kind or description, loss of rights or services, incidental, punitive, indirect, special or consequential damages, or monetary damages of any kind.

**15. Force Majeure.** Franchisee shall not be liable for any failure to perform its obligations under this Agreement if Franchisee presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Franchisee's reasonable control and not due to any act by Franchisee.

**16. Notices.** Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Franchisee's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the party to be notified as set forth below:

If to City:

City Clerk  
City of Monrovia  
415 South Ivy Avenue  
Monrovia, CA 91016

If to Franchisee:

Melissa Farwell  
Chief Operating Officer  
Raw Inspiration, Inc.  
23501 Park Sorrento Drive, Suite 106  
Calabasas, CA 91302

With a courtesy copy to:

Craig A. Steele, City Attorney  
Richards, Watson & Gershon  
350 South Grand Avenue, 37<sup>th</sup> Floor  
Los Angeles, CA 90071

**17. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Franchisee shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Franchisee will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

**18. Prohibition of Assignment and Delegation.** Franchisee shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Franchisee from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 18 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 18, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

**19. No Third Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**20. Exhibits.** Exhibits A, B, and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises

between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

**21. Entire Agreement and Modification of Agreement.** This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may be modified only by a writing signed by both parties.

**22. Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

**23. Word Usage.** Unless the context clearly requires otherwise, (a) the words “shall,” “will” and “agrees” are mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

**24. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

**25. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Monrovia.

**26. Attorneys’ Fees.** In any litigation or other proceeding by which one party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys’ fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

**27. Contract Interpretation.** No party shall have any portion of this Contract interpreted against it by virtue of having drafted that portion or any other portion of this Contract.

**28. Dispute Resolution.** If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, and if either

party chooses not to terminate this contract, the Parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. The Parties agree to equally share the costs of mediation. If either party commences arbitration, litigation or some other dispute resolution procedure before making a good faith attempt to mediate the dispute, that party waives its rights to recover its costs and attorney's fees in that procedure, even if it is deemed the prevailing party. The Parties agree that the mediation called for by this provision shall take place in Los Angeles County utilizing JAMS alternative dispute resolution services.

**29. Severability.** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

**30. Waiver.** No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

[SIGNATURE PAGE FOLLOWS]

The parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Monrovia,  
a California municipal corporation

Franchisee:

Raw Inspiration, Inc.,  
a California 501(c)3 non-profit corporation

By: \_\_\_\_\_

Name: Dylan Feik  
Title: City Manager

By: \_\_\_\_\_

Name: Brittany Schaefer  
Title: Board Secretary

ATTEST:

By: \_\_\_\_\_

Name: Alice D. Atkins, CMC  
Title: City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: Craig A. Steele  
Title: City Attorney

## **EXHIBIT A**

### **Scope of Services**

- The Station Square Farmers Market (Event) shall be held in the Franchise Area at Station Square Park. This is the geographic area within the City depicted on **Exhibit B**.
- The Event shall occur each Saturday. The Event shall begin at 9:00 AM and end at 2:00 PM. These times may be amended only with the expressed written consent of the City.
- Prior to the beginning of the Event at 9:00 AM each week, Franchisee shall work with the Event vendors to cart in all of their merchandises and equipment. At no time shall the Franchisee allow vehicles to drive on to the Park grounds unless authorized in advance by the City.
- It is the City's expressed desire that the Event should have an appealing and visually attractive look and feel. Franchisee shall endeavor to fulfill this desire by taking reasonable steps to maintain a festive yet professional visual aesthetic for the Event. More specifically, Franchisee shall endeavor to achieve the City's visual appearance and aesthetic goals in the following areas:
  - Pedestrian Thoroughfares. Franchisee shall maintain clear and clean thoroughfares for pedestrian traffic, and ensure the thoroughfares comply with ADA access requirements at all times. It shall be the duty and responsibility of the Franchisee to familiarize itself with the laws, statutes ordinances and rules as they pertain to federal and state ADA access requirements and ensure the enforcement thereof.
  - Farmer's Market. Franchisee shall ensure that the Certified Farmer's Market area is kept safe, clean and free from any obstructions or obstacles.
  - Event Staff. Franchisee's employees and staff shall wear a uniform shirt, to be provided by the Franchisee, during the Event hours of operation.
- The Event is a year-round event that will be held each week, except when both parties agree that cancelling due to inclement weather is appropriate.
- Franchisee further agrees to the following Event provisions:
  - Strive to provide family-centered and produce-centered Event with the following vendor mix:
    - i. A minimum 75% of the vendors will be engaged in the sale of fruits, vegetables, flowers, fish, baked goods, and quality, prepared foods to go

- ii. The remainder of the market may accommodate a number of different users, and the Franchisee commits to working to attract “artisan quality” craft food vendors.
  - Franchisee commits to giving priority to any and all Monrovia Based businesses that may want to participate in the Event.
  - Franchisee shall ensure the provision of live entertainment at the Event on holidays and monthly Kid Day’s.
  - Franchisee shall work with the City to explore a weekly Beer Garden at the event, highlighting Monrovia brewers.
  - Franchisee shall develop and install traffic control signage throughout the event that is deemed appropriate by the City. The Franchisee must also provide sufficient signage at each end of the Event notifying passer bys of Event and prohibiting vehicular access into the Event while the Event is in operation.
  - Franchisee shall work to set-up the Event in a timely manner each week, so as to ensure that the Event begins on time. Furthermore, Franchisee shall work to ensure the timely disassembly of all booths and equipment immediately after the Event so that the park is restored as soon as reasonably possible.
  - Franchisee shall provide the City proof of acquiring all Permits & Franchises required by law listed in **Exhibit C**.
  - Franchisee shall maintain clean and safe conditions at the Event, and an attractive appearance at the Event, including but not limited to ADA compliance and trash pick-up.
- Franchisee also agrees to provide the following:
    - Vendor Requirements / Fees. Franchisee agrees to provide the City with a copy of all Event vendor requirements and vendor fee schedules.
    - Merchant Participation. Franchisee shall accommodate any Monrovia Business requesting booth space at the Event. However, all businesses requesting booth space will be subject to the same requirements as other vendors in the Event and shall be required to comply with Franchisee’s operational requirements and vendor fee structure.
    - Customer Service. Franchisee shall maintain a log of complaints and other matters of concern that pertain to the Event. The log shall include the name of the complainant, a description of the complaint, how Franchisee resolved the complaint, the date that Franchisee first became aware of the complaint and the date of resolution. Franchisee shall endeavor to resolve all complaints in a timely manner. Any complaint or matter of concern that, after a reasonable effort by

Franchisee, is not resolved shall be reported immediately to the City and, if necessary, heard by the Oversight Committee as a grievance. The log shall be provided to the City monthly, and shall be subject to review, direction and action by City.

- Public Safety. As the Event generates a high level of pedestrian activity, Franchisee develop for City approval a security plan for the Event. At a minimum, it is expected that Franchisee shall retain and assign at least four individuals to serve as security for the Event. It shall be the duty and obligation of Franchisee and the security personnel to ensure all vehicle and pedestrian thoroughfares are maintained in compliance with federal and state ADA access requirements, and that vendor booths comply with appropriate pathway clearance. Should the City require additional security officers, Franchisee and City shall meet and confer to amend this section of the Agreement.
- Equipment. Franchisee shall maintain all equipment used to coordinate the Event in a safe and clean manner, and in good operating condition and appearance. Franchisee shall ensure all equipment specified or required by the Encroachment Permit is properly installed and maintained.
- Waste Management & Clean-up. Maintaining and promoting a clean, safe and attractive environment in Station Square Park is an important City objective. Consequently, Franchisee shall make all necessary provisions for waste management and clean-up of all areas directly impacted by the Event. When the Event is operational, Franchisee shall assign staff to maintain a safe, clean and sanitary environment within the Franchise Area and adjacent areas. At the completion of each Event, Franchisee shall ensure that the Franchise Area be left in a clean condition. Franchisee shall conduct inspections to ensure compliance with this section.
- Franchisee shall provide all necessary trash containers, trash clean up, refuse disposal services, and a plan for cleaning up all impacted parking lots on a weekly basis.
- Franchisee will be provided access to the City owned restrooms at Station Square Park. Franchisee is required to ensure the restrooms are open and clean at 9:00 AM and locked at 2:00 PM each Saturday. The Franchisee shall report any damage to the restrooms on a weekly basis.
- Franchisee will not need access to water or electricity for the purposes of the Farmers Market. However, when needed, the City shall provide power to the Station Square band shell to support entertainment.
- Franchisee shall comply with all City ordinances and directives.

# EXHIBIT B Franchise Area



**EXHIBIT C**  
**Permits / Licenses**

Certified Farmers Market Certificate

Public Health Permit

Monrovia Business License

Monrovia Encroachment Permit

Monrovia Fire Inspection Permit

Authorization Letter to Access City Restrooms