AGREEMENT

This AGREEMENT is made and entered into this 5th day of June, 2012, by and between the **TOWN OF RAYMOND**, a Maine municipality with a mailing address of 401 Webb Mills Road, Raymond, ME 04071-0401, acting by and through its **Selectmen**, as authorized by a vote of the Town of Raymond on June 5, 2012 (the "**Town**"), and **JOANNE ALFIERO**, an individual with a mailing address of PO Box 39, 13 Fern Avenue, Windham, ME 04071 ("**Alfiero**").

RECITALS

WHEREAS, the State of Maine, acting by and through its Department of Transportation (the "**DOT**"), as successor in interest to the Maine State Highway Commission, owns certain property adjacent to and southwest of U.S. Route 302 in the Town of Raymond, County of Cumberland, and State of Maine, as described in a Layout and Notice of Taking dated June 27, 1956 and recorded July 2, 1956 in the Cumberland County Registry of Deeds in Book 2299, Page 11, and more particularly referenced as Item No. 23 on Sheet 4 of a plan entitled, "Maine State Highway Commission, Right of Way Map, State Highway '14', Raymond, Cumberland County, Federal Aid Project No. F-014-1(5)," dated January 1956, a copy of which is attached hereto as Exhibit A, which property is unpaved and at times used by the public for parking to gain access to Sebago Lake for recreational purposes (the "**DOT Property**");

WHEREAS, the State of Maine, acting by and through its Department of Inland Fisheries and Wildlife (the "**IF&W**"), owns certain property southwest of U.S. Route 302 in the Town of Raymond, County of Cumberland, and State of Maine, being situated between the DOT Property and Sebago Lake, by virtue of a deed from St. Joseph's College to the IF&W dated March 28, 2000 and recorded in the Cumberland County Registry of Deeds in Book 15389, Page 90, a copy of which is attached hereto as Exhibit B, which property contains a paved parking area, beach area and boat launch ramp (the "**IF&W Property**");

WHEREAS, pursuant to a certain license agreement dated March 3, 2000 by and between the DOT, the IF&W and the Town (the "**DOT License Agreement**"), the DOT granted to the Town a thirty (30) year license to enter on the DOT Property in order to provide on-going, routine maintenance on and management of the DOT Property, at the Town's sole expense, in accordance with the terms and conditions of the DOT License Agreement;

WHEREAS, pursuant to a certain lease agreement dated March 23, 2000 by and between the IF&W and the Town (the "**IF&W Lease Agreement**"), the IF&W leased the IF&W Property to the Town for a period of thirty (30) years and thereby assigned to the Town all of its financial and administrative responsibilities for on-going, routine maintenance, management and operation of the IF&W Property in accordance with the terms and conditions of the IF&W Lease Agreement;

WHEREAS, mindful of its on-going obligations under the DOT License Agreement and the IF&W Lease Agreement, including, without limitation, maintenance, management and operation obligations (the "**Obligations**") and the costs associated therewith, the Town issued a Request for Proposals in March 2012 inviting proposals from individual persons and/or private sector management entities interested in assuming the Obligations with respect to the DOT Property and certain portions of the IF&W Property, namely the paved parking area and the beach area, as depicted on Exhibit C attached hereto (collectively, the "**Parking and Beach Areas**");

WHEREAS, in response to the Town's request, on or about March 16, 2012, Alfiero submitted a written proposal (the "**Alfiero Proposal**") in which she proposed that the Town, in return for Alfiero assuming the Obligations on the Parking and Beach Areas, permit Alfiero to operate a hot dog cart including sales of associated food items, swim diapers, sunscreen, small floatation aids and hold the occasional lobster bake;

WHEREAS, the Town's Selectmen have reviewed the Alfiero Proposal and, prior to and as a condition to voting on the Alfiero Proposal, have required Alfiero to seek and receive the necessary acknowledgements, approvals and consents from the DOT, the IF&W and the United States Fish and Wildlife Service ("**USFWS**") (as contemplated under the IF&W Lease Agreement) for the assignment of the Obligations on the Parking and Beach Areas and assumption thereof by Alfiero;

WHEREAS, as a condition for providing its approval for the proposed assignment of the Obligations, the DOT has required, and Alfiero has hereby agreed to provide, affirmation that the obligations and rights granted by this Agreement shall remain subject to the primary transportation purposes of the U.S. Route 302 corridor as determined by the DOT in its sole discretion;

WHEREAS, as a condition for providing its acknowledgement of the proposed assignment of the Obligations, the IF&W has required, and Alfiero has hereby agreed to provide, affirmation that the assignment will in no way adversely affect public use and parking associated with the operation of the boat launch ramp as determined by the IF&W in its sole discretion;

WHEREAS, upon confirmation that the DOT, the IF&W and the USFWS have provided all necessary written acknowledgements, approvals and consents for the proposed assignment evidenced by this Agreement, which acknowledgements, approvals and consents are conclusively evidenced by a separate acknowledgement letter from IF&W and the authorized signature of the DOT attached hereto, the Town's Selectmen have voted to enter this Agreement as of June 5, 2012, subject to Alfiero's compliance with all federal, state and municipal laws and regulations and all conditions and requirements imposed by the DOT, the IF&W and the USFWS, all as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants hereafter referred to and other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the Town and Alfiero agree to be bound by the following terms and conditions:

1. **PREMISES.** The Town hereby sub-licenses to Alfiero the DOT Property and sub-leases to Alfiero a portion of the IF&W Property, namely the paved parking area and the beach area, which together with the DOT Property comprises the Parking and Beach Areas, as depicted on Exhibit C attached hereto (the "**Premises**").

2. **TERM.** The term of this Agreement shall be five (5) years, commencing on June 1, 2012 and ending on May 31, 2017 (the "**Term**"), subject to the Town's annual right to review performance hereunder within thirty (30) days of September 30 each year (the "**Annual Review Period**"). If the Town determines, in its sole discretion, that this Agreement requires modification for any reason, the Town may provide written notice of such requirement to Alfiero within the Annual Review Period. If the parties are unable to reach a written agreement on the modification within thirty (30) days of Alfiero's receipt of the written notice, this Agreement shall be deemed terminated and Alfiero shall have thirty (30) days to remove her personal property and, upon request of the Town, any installations, improvements and/or fixtures installed by or on behalf of Alfiero, from the Premises, after which time all remaining personal property shall become the property of the Town.

3. **PAYMENT.** During the Term of this Agreement, Alfiero shall pay to the Town an annual fee of Five Hundred Dollars ($500.00) on June 1 of each year which will be waived in the first year.

4. **ALFIERO MAINTENANCE AND MANAGEMENT OBLIGATIONS.** During the Term of this Agreement, Alfiero shall, at her sole expense, operate, maintain and administer the Premises and the use and repair of any existing recreational facilities located thereon in such a manner as to present and maintain a safe, attractive and inviting appearance to the general public. Specifically, Alfiero shall perform routine maintenance and management duties on the Premises, including, without limitation, the following:

(a) provide adequate supervision and staffing of the beach area as required by the Town and as required by applicable ordinances, regulations and laws, including opening and closing of the beach area at 9 a.m. and 8 p.m., respectively, seven (7) days a week during the summer season, which runs each year from Memorial Day through Labor Day;
(b) provide adequate supervision of the parking areas to ensure there is no adverse effect on the public use and parking associated with the operation of the boat launch ramp;
(c) provide adequate trash receptacles and daily trash pick-up and removal services and clean-up of debris on the Premises;
(d) take all necessary steps to prevent vermin infestations on the Premises;
(e) provide clean-up and removal of winter sand in or around the parking areas; and
(f) perform minor repairs on existing recreational facilities, signs and fences located on the Premises.

Alfiero may, from time to time, establish such rules and regulations as she deems necessary to provide for the proper use and maintenance of the Premises, provided that such rules and regulations shall be subject to review and approval by the Town, shall not discriminate on the basis of race, color, creed, national origin, sexual orientation or place of residence and shall not violate any terms of the DOT License Agreement or IF&W Lease Agreement. Alfiero shall post these rules and regulations conspicuously on the Premises and enforce them. When the Town's staff or agents are on the Premises, they shall have the right to enforce said rules and regulations.

5. **TOWN MAINTENANCE OBLIGATIONS.** During the Term of this Agreement, the Town shall, at its sole expense, provide, install and maintain:

(a) two (2) portable toilets on the Premises; and
(b) swimming ropes and buoys delineating the public swimming area adjacent to the beach area on Sebago Lake, provided that after initial installation, Alfiero shall be obligated to maintain same.
(c) the Town's Public Works Department will pick up bagged beach "clean up" trash in the morning, but this will not include trash that is the result of sales operations or any commercial activity, which will be Alfiero's responsibility.

6. **PERMITTED USES.** In addition to making the beach area available for current recreational uses by the public, Alfiero may use the Premises in the following manner: 1) open a vending cart on the beach to sell vending food items and the following other accessory items: swim diapers, sunscreen, and small flotation aids; 2) install advertising screens and other signage; and 3) install picnic tables. These activities/uses may require approvals, permits and/or licenses from all or some of the following state agencies: a) Department of Environmental Protection, b) IF&W, c) DOT and d) Bureau of Parks and Lands ("**BP&L**"). Upon receipt of all necessary state-level approvals, Alfiero will then need to obtain all necessary town-level permits and licenses for her proposed activities. The contemplated improvements and uses are subject to the Town's prior written consent and, thereafter, on-going compliance with all federal, state and municipal laws and regulations and shall be permitted only so long as such improvements and uses do not violate the DOT License Agreement and IF&W Lease Agreement.

Except as provided herein, Alfiero shall not make any use or permit any activity to be operated, carried on or engaged in on the Premises.

Except as provided herein, Alfiero shall make no alterations to the Premises or construct any structures, including, without limitation, fences, signs, fireplaces or picnic tables, without the written permission of the IF&W (if necessary), the DOT (if necessary) and the Town, but Alfiero may maintain and replace any structures, fences or signs existing on the Premises at the time hereof.

7. **IMPROVEMENTS; REPAIRS.** In addition to the improvements permitted in Section 6 above, Alfiero shall have the right, at her sole expense from time to time during the Term, to improve or alter the Premises, including placement of signs, providing that any improvements

and alterations shall be of a quality consistent with other improvements on the Premises, in compliance with all applicable federal, state and municipal laws and regulations and approved in writing by the IF&W (if necessary), the DOT (if necessary), the DEP (if necessary), the BP&L (if necessary) and the Town. Prior to any construction, and at Alfiero's expense, detailed plans of any major alterations or improvements to the Premises must be submitted to the IF&W, the DOT, the DEP, the BP&L and the Town for review and written approval. Written approval may be withheld if the IF&W, the DOT, the DEP, the BP&L and/or the Town deems the alterations or improvements inconsistent with the current use of the Premises.

All improvements on the Premises at the date hereof shall remain the property of the IF&W, the DOT and/or the Town. Any and all additional improvements to the Premises shall become property of the IF&W, the DOT and/or the Town at the termination of this Agreement, unless such improvements made by Alfiero are removed by Alfiero within thirty (30) days of the termination of this Agreement.

Alfiero shall maintain the Premises and all appurtenances in good repair.

8. **ALFIERO COVENANTS.** During the Term of this Agreement, Alfiero covenants and agrees:

(a) not to perform any act or permit the commission of any act that would adversely affect the primary transportation purposes of the U.S. Route 302 corridor or otherwise violate any term and/or condition of the DOT License Agreement;
(b) not to perform any act or permit the commission of any act that would adversely affect the public use and parking associated with the operation of the boat launch ramp or otherwise violate any term and/or condition of the IF&W Lease Agreement;
(c) not to perform any act or permit the commission of any act that is unlawful or contrary to any federal, state, and/or municipal laws and regulations in force at the time of this Agreement or any time in the future;
(d) not to charge any user-related fees for use of the Premises by members of the public;
(e) to comply with the Town's requirements for employment as set forth in the Town's Personnel Policy, including performing successful criminal background checks, performing standard drug and alcohol testing and implementing harassment policies, for all individuals who will be working for or on behalf of Alfiero on the Premises.

9. **PUBLIC SAFETY.** Alfiero is required to take any and all public safety precautions required by law, including state approval for food service license.

10. **LIENS.** Alfiero shall be responsible for all assessments, license fees, permit fees and tax levies on the Premises. Alfiero shall keep the Premises free and clear from all mechanics' liens for work or labor done, services performed, appliances, water supplied, sewerage disposed of, gas, electricity, lights, heat and power contributed, used or furnished in or about the Premises for or in connection with any operation of Alfiero, or any alteration, improvements, repairs or additions which Alfiero may make or permit or cause to be made or any work in connection by,

for, or permitted by Alfiero on or about the Premises.

11. **REQUIREMENTS OF LAW.** During the Term of this Agreement, Alfiero is responsible for complying with all federal, state, and municipal laws and regulations.

12. **ASSIGNMENT.** This Agreement may not be assigned nor may the Premises be sublet by Alfiero without the prior written consent of the Town, which consent may be withheld in the Town's sole discretion.

13. **INSURANCE.** Alfiero shall provide insurance for comprehensive general public liability against claims for personal injury, death or property damage occurring on, in or about the Premises, or respective use of any vehicle or equipment used or supplied by Alfiero in connection with the Premises, in the following amounts:

Commercial General Liability	
Per occurrence	$400,000.00
Casualty Insurance (for personal property)	
Per occurrence	$400,000.00

IF&W, the DOT and the Town shall be named as additional insureds with Alfiero on any such policies. Such insurance must provide that the IF&W, the DOT and the Town be notified in the event any of the above policies are cancelled, and with respect to notification of DOT and IF&W, such notification must occur in accordance with the DOT License Agreement and IF&W Lease Agreement. Alfiero shall furnish the Town with copies of all insurance policies and the IF&W and the DOT with satisfactory proof of all insurance policies prior to assuming responsibility for the operation and maintenance of the Premises. The IF&W, the DOT and/or the Town may from time to time require increases in insurance coverage during the Term of this Agreement to levels that are commercially reasonable for the permitted uses. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the IF&W, the DOT, the Town or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

14. **INDEMNITY.** Alfiero shall indemnify, defend and hold harmless the IF&W, the DOT and the Town and their respective officers, agents and employees, against and from all costs, expenses, liabilities, losses, damages, inspections, suits, actions, fines, penalties, claims and demands of every kind and nature, including reasonable counsel fees, asserted by or on behalf of any person, utility or governmental authority whatsoever arising out of (a) any failure by Alfiero to perform any of the agreements of this Agreement on Alfiero's part to be performed, (b) the use of the Premises by Alfiero or her employees, agents, guests, invitees, customers, contractors, or officers, or (c) any accident, injury, or damage that occurs in, on, or about the Premises, or appurtenances thereto, however occurring and any matter or thing growing out of the condition, occupation, maintenance, alteration, repair, use or operation of the Premises, appurtenances thereto or any part during the Term. Nothing herein shall, nor is intended to, waive any defense,

immunity or limitation of liability which may be available to the IF&W, the DOT, the Town or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

15. **DEFAULT; TERMINATION.** If Alfiero defaults in the performance of any of the agreements, terms, covenants or conditions hereof on Alfiero's part to be performed and remedy of such default has not been commenced within fourteen (14) days after written notice thereof by the Town and completed within fourteen (14) days after commencing such remedy, or if such performance cannot be reasonably had within such fourteen (14) day period, the Agreement shall be deemed terminated and Alfiero shall have thirty (30) days to remove her personal property, after which time it shall become the property of the Town. If the Town provides three (3) written notices of default to Alfiero within any sixty (60) day period during the Term, the Agreement shall be deemed terminated immediately upon delivery of the third notice and Alfiero shall have thirty (30) days to remove her personal property from the Premises as stated above. In the event of termination of this Agreement, the Town may immediately re-enter the Premises, remove all persons therefrom and repossess and control the Premises and any and all activities thereon.

At any time during the Term of this Agreement, the Town or Alfiero may terminate this Agreement early for any reason upon forty-five (45) days prior written notice to the other party. Upon written notice of Alfiero or the Town of early termination of this Agreement, Alfiero shall within forty-five (45) days (a) peaceably and quietly surrender and deliver to the Town the Premises together with any improvements that existed at the commencement of this Agreement, and (b) remove all fixtures, equipment and personal property owned by Alfiero and located on the Premises with respect to which the Town has given Alfiero notice to remove and Alfiero shall repair any damage to the Premises caused by such removal.

16. **SELF-HELP.** If Alfiero defaults in the performance of any of the agreements, terms, covenants or conditions hereof on Alfiero's part to be performed, the Town may, at its option, without waiving any claims for default, at any time thereafter cure such default for the account of Alfiero, and Alfiero shall reimburse the Town for any amount paid and any expense or contractual liability so incurred, prior to the expiration of any cure period but after notice to Alfiero, if it is necessary, in the Town's discretion, to protect the Premises, or its interest therein, or to prevent injury or damage to persons or property.

17. **ACCESS TO THE PREMISES.** The IF&W, the DOT and the Town and their respective officers, agents and employees shall have access to the Premises at all times for the purpose of assuring compliance with the conditions of the IF&W Lease Agreement, the DOT License Agreement and/or this Agreement. At times when Alfiero would not otherwise have staff at the Premises, the Town reserves the right to enter the Premises for the purpose of supervising public use.

For the purpose of allowing the Town to satisfy its obligations under the IF&W Lease Agreement, Alfiero shall provide the Town with an update on the use and operation of the Premises on an annual basis (or more frequently as may be desired by the Town) for delivery to the IF&W in order to coordinate the addressing of any unforeseen issues.

Alfiero and the Town agree that the Portland Water District shall have the right to access and test the water in the area periodically.

18. **QUIET ENJOYMENT.** Subject to title encumbrances of record, the Town covenants that, so long as Alfiero shall faithfully perform the agreements, terms, covenants and conditions of this Agreement, Alfiero shall and may peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from the Town.

19. **NOTICES.** Wherever it is provided in this Agreement that notice, demand, request or other communication shall or may be given to or served upon any of the parties by the other(s), and whenever the parties desire to give or serve upon the other(s) any notice, demand, requests or other communication with respect to this Agreement or the Premises, each such notice, demand, request or other communication shall be deemed duly given if sent in writing prepaid registered or certified mail, return receipt requested, when deposited with the U.S. Postal Service, or if delivered to said address by hand, when so delivered and addressed to the parties at the addresses as follows or to such other address as the parties may specify in notice to the other(s):

Town of Raymond
401 Webb Mills Road
Raymond, ME 04071-0401
Attention: Code Enforcement Officer

Joanne Alfiero
PO Box 39
13 Fern Avenue
Windham, ME 04071

Department of Transportation – Region 1
51 Pleasant Hill Road
Scarborough, ME 04074
Attention: Kyle Hall, Region 1 Engineer

20. **SEVERABILITY.** If any provision in this Agreement is found by a court of law to be in violation of any ordinance, statute, law or public policy, and if such court should declare such portion or provision of this Agreement to be illegal, invalid, unlawful, void or unenforceable as written then it is the intent of the parties that the rights, obligations and interest under the remainder of this Agreement shall continue in full force and effect to the extent reasonably possible. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

21. **ATTORNEYS' FEES.** In any legal action brought by the Town against Alfiero to enforce any of the terms and conditions of this Agreement or otherwise relating to the Premises, the Town shall be entitled to all costs incurred in connection with such action, including all reasonable attorneys' fees, legal expenses and other reasonable costs.

22. **INDEPENDENT CONTRACTOR.** The parties hereby expressly agree that Alfiero is and shall be acting as an independent contractor and not an employee of the Town under this Agreement. Alfiero is not entitled to any of the benefits provided to the employees of the Town. Alfiero shall directly pay, from Alfiero's own funds, all state and federal income taxes, social security and Medicaid taxes, unemployment insurance, and all other amounts due to any state or federal authorities on account of the work to be performed by Alfiero under this Agreement.

23. **SUBORDINATION.** This Agreement and all the rights of parties hereunder are subject and subordinate to the DOT License Agreement and the IF&W Lease Agreement. Each party agrees that it will not, by its act or omission to act, cause a default under the DOT License Agreement and the IF&W Lease Agreement. In furtherance of the foregoing, the parties hereby confirm, each to the other, that it is not practical in this Agreement to enumerate all of the rights and obligations of the various parties under the DOT License Agreement and the IF&W Lease Agreement and specifically to allocate those rights and obligations in this Agreement. Accordingly, in order to protect the Town against a default by Alfiero, which might cause a default or event of default by the Town under the DOT License Agreement and/or the IF&W Lease Agreement:

(a) Alfiero shall perform all affirmative covenants and shall refrain from performing any act which is prohibited by the negative covenants of the DOT License Agreement and the IF&W Lease Agreement, where the obligation to perform or refrain from performing is by its nature imposed upon the party in possession of the Premises.

(b) The Town shall have no duty to perform any obligations of the DOT or the IF&W which are, by their nature, the obligation of an owner of real property. The Town shall have no responsibility for or be liable to Alfiero for any default, failure or delay on the part of the DOT or the IF&W in the performance or observance by the DOT or the IF&W of any of its obligations under the DOT License Agreement and IF&W Lease Agreement, nor shall such default by the DOT or the IF&W affect this Agreement or waive or defer the performance of any of Alfiero's obligations hereunder except to the extent that such default by the DOT or the IF&W excuses performance by the Town, under the DOT License Agreement and IF&W Lease Agreement.

24. **APPLICATION OF THE TOWN'S PEDDLER'S ORDINANCE**. Alfiero acknowledges and agrees that, with respect to her operation of the hot dog cart on Sebago Lake adjacent to the Premises, she shall be considered a "peddler," as that term is defined in the Town's Peddler's Ordinance dated as of May 21, 1994, as amended (the "Peddler's Ordinance"), and shall be subject

to all of the terms and conditions of the Peddler's Ordinance, except for Section VI(16) (requiring an application for a Peddler's License to be made only for private property and only for the commercial zone). Alfiero further acknowledges and agrees that Section VI(15) of the Peddler's Ordinance shall apply only to the extent that the insurance requirements placed on Alfiero under this Agreement are at any time less restrictive than the insurance requirements set forth in Section VI(15).

25. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement contains the entire agreement between the parties and supersedes any and all prior or contemporaneous agreements, understandings or representations not specifically stated herein. No modification, supplement or amendment to or waiver of the provisions of this Agreement shall be effective unless in writing specifically referring hereto and signed by parties.

EXECUTED as a sealed instrument as of the date first set forth above.

_____ Witness	By: _____ Name: Joanne Alfiero
	TOWN OF RAYMOND
_____ Witness	By: _____ Name: Chairman Joe Bruno, Selectman
_____ Witness	By: _____ Name: Vice-Chair Lawrence Taylor, Selectman
_____ Witness	By: _____ Name: Michael Reynolds, Selectman
_____ Witness	By: _____ Name: Charles Leavitt, Selectman
_____ Witness	By: _____ Name: Samuel Gifford, Selectman
_____ Witness	By: _____ Name: Don Willard, Town Manager

SEEN AND AGREED TO BY:

STATE OF MAINE
Department of Transportation

_____
Witness

By: _____
Name: _____
Its _____

<u>EXHIBIT A</u>

[DOT Property]

EXHIBIT B

[IF&W Property]

EXHIBIT C

[Parking and Beach Areas]