STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Matthew Grimes, Brookfield

File No. 2013-076B

AGREEMENT CONTAINING A CONSENT ORDER

This agreement, by and between the Brookfield Water Pollution Control Authority, hereinafter "BWPCA" or "Respondent," and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. At all times relevant hereto, a referendum question concerning the financing of sewers to certain condominium complexes was pending before the Brookfield electors (the "referendum question").

2. The Brookfield First Selectman, William Davidson, and the Chairman of the BWPCA entered into an informal agreement under which the BWPCA would reimburse the municipality for expenditures related to a postcard for a pending referendum question (the "postcard").

3. The postcard stated, "We urge your support."

4. Mr. Davidson authorized the direct expenditure of $1,250.40 in municipal funds for the postage. Mr. Davidson did so with the specific agreement and understanding that any and all such costs would be reimbursed by the BWPCA. In accordance with such agreement, the BWPCA ultimately reimbursed the regular municipal accounts the entirety of such postage cost from funds controlled by the BWPCA. See File No. 2013-076A.

5. The BWPCA paid a vendor directly for the printing of the postcard in the amount of $1,080.00.

6. Prior to authorizing any expenditures for such purposes, Mr. Davidson and the BWPCA or their agents contacted the Commission for informal advice regarding whether BWPCA funds were "municipal funds" for purposes of § 9-369b. The informal advice offered by Commission staff was that the matter had not yet been addressed by the Commission and, as of that date, it was an open question of law.

7. Connecticut General Statutes § 9-369b (a) provides:

> [A]ny municipality may, by vote of its legislative body, authorize the preparation and printing of concise explanatory texts of local proposals or questions approved for submission to the electors of a municipality at a referendum ... Thereafter, each such explanatory text shall be prepared by the municipal clerk, subject to the approval of the municipal attorney, and shall specify the intent and purpose of each such proposal or question. Such text shall not advocate either the approval or disapproval of the proposal or question. ... [N]o expenditure of state or municipal funds shall be made to influence any person to vote for approval or disapproval of any such proposal or question....

8. Section 9-1 (i) defines "Municipality" for purposes of Title 9 [including § 9-369b (a)] as "any city, borough or town within the state."

9. Neither "municipal funds" nor "funds" are defined for purposes of Chapter 152 (Referenda). However, for purposes of Chapter 112 (Municipal Financing), "public funds" is defined in General Statutes § 7-401 (4) as "any moneys collected or received by, or in the custody of, any person and belonging to, or held in trust for, the municipality, including, but not limited to, moneys held in trust or for some public or charitable purpose by the municipality."

10. General Statutes § 7-267, governing the financing of Water Pollution Control Authorities, provides:

> All benefit assessments and charges for connection with or use of the sewerage system, whether pledged for payment of bonds or notes or otherwise, *shall be kept separate from other funds of the municipality* and shall be used for the sewerage system, including the payment of debt incurred for the sewerage system and interest thereon, and for no other purpose [Emphasis Added.].

11. The Commission has previously determined that compliance with the procedural requirements of § 9-369b is the exclusive method by which a municipality may issue and fund explanatory texts concerning a pending referendum question. See *Complaint of Valerie Friedman*, File No. 2002-160; *Complaint of Walther Grunder, et al*, File No. 1998-256; *Complaint of Barbara Stambo; et al*; File No. 1996-227; *Complaint of Donald Hassinger*, File No. 1994-104; *Complaint of G. Wilbur, et al*, File No. 1994-133.

12. The Commission has consistently concluded, "that communications that recommend or urge support of or opposition to a referendum question are subject to the restrictions found in Section 9-369b." *In the Matter of a Complaint by Jennifer Iannucci, Bridgewater*, File No. 2006-166, ¶ 8.

13. The Commission has historically concluded that communications which urge a particular result, either by express wording of advocacy or when considered as a whole, would make the ordinary reasonable person believe that a particular result is urged, constitute advocacy. *Complaint by Marie Egbert, Hebron,* File No. 2010-056 at ¶ 15. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing. *Id.; see also Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999).

14. The Commission hereby concludes that the requirement of General Statutes § 7-267 that funds controlled by municipal water pollution control authorities "shall be kept separate from *other* funds of the municipality" indicates that the funds at issue are a type of funds of the municipality [Emphasis added]. For example, the statute does not read that the funds "shall be kept separate from funds of the municipality." Accordingly, the Commission further concludes that municipal water pollution control authority funds under § 7-267 are municipal funds for purposes of § 9-369b.

15. The Respondent agrees to abide by such interpretation under the instant consent order.

16. The Parties agree that the payment of expenses associated with the postcard by the BWPCA constituted an unintentional violation of the statute.

17. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:

    (1) the gravity of the act or omission;
    (2) the amount necessary to insure immediate and continued compliance;
    (3) the previous history of similar acts or omissions; and
    (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

18. The Commission has applied the following mitigating factors in its consideration of the present settlement with the Respondent: (1) Prior to undertaking its course of action, the Respondent sought the Commission's advice, which accurately reported that, at the time of this fact set, the Commission had not yet spoken as to whether funds controlled by the municipal water pollution control authority were municipal funds for purposes of § 9-369b as has been clarified in the instant consent order. (2) The Respondent and its officers and agents have no prior identified history of violating the statutes under the Commission's jurisdiction. (3) The Respondent's violation of the statute was unintentional.

19. The Respondent admits all jurisdictional facts and agrees that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.

20. It is understood and agreed that this agreement will be submitted to the Commission at its next available meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission by any party in any subsequent hearing, if the same becomes necessary.

21. The Respondent waives:

    (a) Any further procedural steps;
    (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
    (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.

22. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondent or its officer or agents as pertaining to this matter. The Commission reserves any and all causes of action against the Town of Brookfield and its officers other than those against the BWPCA and it officers or agents as related to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth the BWPCA, its officers and agents shall strictly comply with the requirements of Connecticut General Statutes § 9-369b.

IT IS HEREBY FURTHER ORDERED that the BWPCA shall take reasonable steps to educate its officers and agents of the requirements of General Statutes § 9-369b.

The Respondent:

By its counsel: _____
Jeffrey B. Sienkiewicz
Sienkiewicz & McKenna, P.C.
18 Aspetuck Ridge Road
P.O. Box 786
New Milford, CT 06776

Dated: January 22, 2014

For the State of Connecticut:

BY: _____
Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: January 24 2014

Adopted this 19 day of Feb 2014 at Hartford, Connecticut by vote of the Commission.

_____
Anthony J. Castagno, Chairman
By Order of the Commission

RECEIVED
STATE ELECTIONS

JAN 24 2014

ENFORCEMENT COMMISSION