

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of the Application of

THE ENLARGED CITY SCHOOL DISTRICT OF
MIDDLETOWN

Petitioner,

**AFFIDAVIT IN RESPONSE
OF PHILLIP J. CLARK**

-against-

Orange Index # 10-7804

THE CITY OF MIDDLETOWN,

JOSEPH M. DeSTEFANO, in his capacity as MAYOR;

J. MIGUEL RODRIGUES, in his capacity as MIDDLETOWN
COMMON COUNCIL PRESIDENT and member of the
MIDDLETOWN COMMON COUNCIL;

JOSEPH G. MASI, THOMAS BURR, SCOTT A. SMITH,
ASHOK SABNIS, RAYMOND DEPEW, BILL HIMARAS,
JOEL SIERRA, and C. LEE GEROW, in their capacities as
members of the MIDDLETOWN COMMON COUNCIL;

THE MIDDLETOWN COMMON COUNCIL;

THE MIDDLETOWN DEPARTMENT OF PUBLIC WORKS;
and

JACOB TAWIL, in his capacity as MIDDLETOWN
DEPARTMENT OF PUBLIC WORKS COMMISSIONER,

Respondents.

For a Judgment under Article 78 of the Civil Practice
Law and Rules.

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STATE OF NEW YORK)

)ss.:

COUNTY OF ORANGE)

PHILLIP J. CLARK, being duly sworn, deposes and says:

1. I am the Chief Executive Officer (CEO) of **Clark Patterson Lee**, Design Professionals, formerly Clark Patterson Associates, at 205 St. Paul Street, Suite 500, Rochester, NY, 14604, and with local offices at 900 Corporate Boulevard, Newburgh, New York, 12550, and at 4 Fairlawn Avenue, Middletown, NY, 10940. I make this Affidavit in support of the City of Middletown's Response to the Petition and Complaint.

2. I am a licensed professional engineer in the State of New York.

3. Clark Patterson Associates was retained by the City of Middletown in 2003 to conduct a Sewer System Evaluation Survey (SSES), for the purpose of evaluating the City-wide wastewater collection system, to identify sections of the sanitary sewer system with excessive infiltration and inflow, and to make recommendations for remediation. The title of our report is City of Middletown, New York Sewer System Evaluation Survey, dated January 2004. I was not directly involved in this study, but I followed its development and progress, and was kept informed throughout. I reviewed the SSES, and concur with its findings and recommendations.

4. **Clark Patterson Lee** serves numerous Municipal and Public School Districts clients throughout the State of New York (as well as other Institutional clients in Georgia, New York North Carolina and South Carolina). In the course of the above, we have assisted several New York Public School District's and related Municipalities where the existing off-site public utilities (Water and/or

Wastewater systems) did not have sufficient capacity to serve a proposed new or expanded Public School facility, where improving the existing off-site municipal utilities was more cost effective and/or the only alternative to providing said “utility services” and whereby the required improvements to said utilities were paid for (either directly or through the respective Municipality) and said costs to the School District were an allowable costs eligible for Capital Construction reimbursement from the New York Department of Education (as part of normal capital construction reimbursements).

5. Based on my experience with the above described situations and familiarity with both the City of Middletown and the Enlarged School District of the City of Middletown, I believe the required improvements to the City of Middletown Wastewater conveyance system (replacement of the existing sewer to Elm Street Sewer due to overflowing manholes during wet weather events) is the only cost effectively solution to providing the necessary wastewater capacity to serve the Enlarged School District of the City of Middletown proposed Chorley Elementary School and as such will be fully eligible cost for reimbursement by the New York State Department of Education Capital Cost reimbursement program, the same program that the District plans to use to offset most of the cost of it’s proposed facility.



PHILLIP J. CLARK, P.E.

State of New York
County of Monroe

ss

On this 18th day of August 2010, before me the subscriber, personally came Phillip J. Clark, to me known, who being by me duly sworn, did depose and say that he executed the above and that he signed his name thereto.



NOTARY PUBLIC

LYNNE M. MORGAN
NOTARY PUBLIC, State of New York
Monroe County #4866258
My Commission Expires Aug. 4, 2014