

Summary of Underpayments for Week Ending 11/03/2012 thru Week Ending 12/22/2012

Case Date: 12/06/2012	Interest Date: 01/07/2014	Client: Custom Tree Care Inc
Case ID: JWC 2012010649	Interest Rate: 16.0	172 SW Spring Creek Lane
ERC: 2010002247		Topeka KS 66610-1921
Investigator: CSE/JH		

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Claimant	Wage Due	Supp Due	Sub-Total	Interest	Total Due
[REDACTED]	6,430.26	3,084.90	9,515.16	1,753.87	11,269.03
[REDACTED]	6,233.48	3,032.30	9,265.78	1,712.39	10,978.17
[REDACTED]	10,523.76	6,051.50	16,575.26	2,978.63	19,553.89
[REDACTED]	5,216.00	1,000.00	6,216.00	1,100.00	7,316.00

Case Total:	32,654.42	17,587.70	50,242.12	9,142.05	59,384.17
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NOTICE TO ALL EMPLOYEES

Any inquiries regarding this Notice of Hearing and Designation of Hearing Officer should be addressed to:

Jason Baldassare, Investigator
Bureau of Public Work
New York State Department of Labor
160 South Ocean Avenue
Patchogue, NY 11772
(631) 687-4878

STATE OF NEW YORK: DEPARTMENT OF LABOR

In the Matter of

"LOOKS GREAT" SERVICES, INC.; and
KRISTIAN AGOGLIA as a shareholder of
"LOOKS GREAT" SERVICES, INC.;

Prime Contractor,

and

CUSTOM TREE CARE, INC.; and GREG GATHERS
as an officer and/or shareholder of CUSTOM TREE
CARE, INC.;

Subcontractor,

for a determination pursuant to Article 8 of the Labor Law
as to whether prevailing wages and supplements were
paid to or provided for the laborers, workers and mechanics
employed on a public work project for the Long Island
Rail Road, Suffolk County, New York.

NOTICE OF HEARING
AND DESIGNATION
OF HEARING OFFICER

Prevailing Wage Rate
PRC No. 2010002247
Case ID: PW12 2012010649
Suffolk County

NOTICE IS HEREBY GIVEN, pursuant to Section 220 et. seq. of Article 8 of the Labor Law, that a hearing will be held at the offices of the New York State Department of Labor, 160 South Ocean Avenue, 2nd Floor, Patchogue, New York 11772, on November 13, 2013 at 9:30 A.M., and on such other further dates as may be necessary until the matter is fully heard, before the Hearing Officer below designated to inquire and report to the Commissioner of Labor on the issues raised by the facts disclosed upon an investigation by the Bureau of Public Work (Bureau) of the Department of Labor. The investigation was commenced to determine whether CUSTOM TREE CARE, INC., (hereafter known as "CUSTOM TREE."), a subcontractor to "LOOKS GREAT" SERVICES, INC. (hereinafter "LOOKS GREAT") complied with the requirements of Section 220 of the Labor Law to pay or provide the prevailing rates of wages and supplements to laborers, workers or mechanics employed in the performance of the public work contract outlined below.

The investigation commenced by the Bureau disclosed, among other things, the following

facts:

1. On or about August 26, 2011, LOOKS GREAT entered into a contract with the Nassau County Department of Public Work, (hereinafter "Nassau") for professional services involving debris management that may be required to effect disaster response and recovery (hereinafter "Debris Management Project").
2. On or about October 29, 2012, Long Island Rail Road (hereinafter "LIRR"), authorized "LOOKS GREAT" to provide services for LIRR as detailed and in accordance with the terms of the contract between LOOKS GREAT and Nassau.
3. Upon information and belief, shortly thereafter CUSTOM TREE was hired as a Subcontractor to furnish materials, labor, tools and equipment necessary for the cutting, trimming and removal of trees, hauling logs, and clearing debris, brush, and branches near electrical lines along and on the LIRR following Hurricane Sandy.
4. The subcontract involved the employment of workers in the Electrician-Tree Trimmer Classification.
5. On or about July 1, 2012, the Bureau issued Prevailing Wage Rate Schedule 2012 for Suffolk County. Prevailing Wage Rate Schedule 2012 for Suffolk County detailed the amount of wages and supplements which were to be paid to or provided for the workers, laborers and mechanics performing work on the Debris Management Project from July 1, 2012 through June 30, 2013, including the following classification: Electrician - Tree Trimmer, with wages of \$28.63 per hour and supplements of \$13.00 per hour.
6. On or about December 19, 2012, three (3) complaints were made against CUSTOM TREE. The complaints were filed with the Department of Labor, regarding payment irregularities by CUSTOM TREE, specifically alleging that CUSTOM TREE failed to pay the proper prevailing wages and supplements on the Debris Management Project.
7. In response to the claims, the Bureau commenced an investigation of the Debris Management Project.
8. On or about December 10, 2012, the Bureau requested that CUSTOM TREE, furnish payroll records and other documents relating to the Debris Management Project.

9. CUSTOM TREE was not cooperative; however, during the course of the investigation LOOKS GREAT and LIRR provided various documents.

10. Based on its investigation, the Bureau determined that CUSTOM TREE employed four (4) workers on the Debris Management Project in the classification listed above, and failed to pay or provide prevailing wages and/or supplements to the workers in accordance with the prevailing wage schedule in effect at the time.

11. During the period from the week ending November 3, 2012, through week ending December 22, 2012, CUSTOM TREE, underpaid prevailing supplements to laborers, workers and mechanics performing work on the Debris Management Project in the amount of \$50,242.12, as reflected on the attached Summary of Underpayments (Exhibit 1).

12. On or about December 28, 2012, the Bureau issued a Notice to Withhold Payment to LIRR, directing it to withhold payment of \$100,000.00 from payments due on the Debris Management Project. The notice was acknowledged and the withholding of \$100,000.00 was confirmed on February 7, 2013.

13. On or about January 8, 2013, the Bureau issued CUSTOM TREE a Notice of Labor Law Inspection Findings notifying CUSTOM TREE of the Bureau's findings on the Debris Management Project.

14. Upon information and belief, during the period when work was performed on the Debris Management Project, GREG GATHERS was an officer who knowingly participated in CUSTOM TREE'S failure to pay or provide prevailing wages and supplements to or for the benefit of the employees who performed work on the contract outlined above for the Debris Management Project, and/or a shareholder, owning or controlling at least ten percentum of the outstanding stock, and one of CUSTOM TREE'S five largest shareholders.

15. Upon information and belief, during the period when work was performed on the Debris Management Project, KRISTIAN AGOGLIA was a shareholder owning or controlling at least ten per centum of the outstanding stock and/or was one of LOOKS GREAT'S five largest shareholders.

The Hearing Officer's Report shall contain findings of fact, conclusions of law and recommendations to the Commissioner of Labor for the determination of the issues raised by the above facts, to wit:

- A. Whether CUSTOM TREE, failed to pay or provide the prevailing wages and supplements to or for the benefit of its workers employed in the performance of the contracts on the above-referenced project and, if so, the amounts of any underpayments, including the rate of interest to be imposed thereon.
- B. Whether CUSTOM TREE, willfully failed to pay the prevailing rate of wages and supplements within the meaning of Section 220-b(3)(b) of the Labor Law on the above-referenced project.
- C. Whether CUSTOM TREE, knowingly participated in the falsification of payroll records within the meaning of Section 220-b(3)(b) of the Labor Law on the Debris Management Project, and should be ineligible to submit a bid, on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years.
- D. Whether a civil penalty should be assessed against CUSTOM TREE, and if so, the amount thereof on the project at issue.
- E. The disposition of any funds being withheld on the Debris Management Project, pursuant to Withhold Payment Notices issued by the Bureau of Public Work as a result of the underpayments to workers as alleged in the above projects.
- F. Whether GREG GATHERS was an officer of CUSTOM TREE who knowingly participated in CUSTOM TREE'S failure to pay or provide prevailing wages and supplements to or for the benefit of employees who performed work on the above referenced project.
- G. Whether GREG GATHERS was a shareholder owning or controlling at least ten per centum of the outstanding stock, and/or was one of the five largest shareholders of CUSTOM TREE during the above-referenced project

H. Whether KRISTIAN AGOGLIA was a shareholder owning or controlling at least ten per centum of the outstanding stock, and/or was one of the five largest shareholders of LOOKS GREAT during the above-referenced project.

I. Whether, pursuant to Labor Law Section 223, LOOKS GREAT, as prime contractor on the Debris Management Project, is liable for non-compliance or evasion by the subcontractor of its obligation to pay prevailing wages and/or supplemental benefits.

J. Any other issues raised by the testimony and evidence at the hearing.

FURTHER NOTICE IS GIVEN that Jerome Tracy, of the New York State Department of Labor, is hereby designated as the Hearing Officer, in place and stead of the Commissioner of Labor to conduct this hearing, with all powers vested in the Commissioner of Labor for that purpose.

All parties are entitled to be represented by counsel and will be afforded full opportunity to offer testimony and evidence, examine and cross-examine witnesses and submit proposed findings of fact and conclusions of law.

TAKE FURTHER NOTICE that if you, as a party to this proceeding, or a witness you plan to produce, will need the services of a translator or an interpreter for a deaf person, you must notify the Hearing Officer designated herein, **NO LATER THAN**, fourteen (14) days prior to the hearing date set forth above to make accommodations for these services. Failure to do so may result in the exclusion of testimony through these means during the course of the hearing.

TAKE FURTHER NOTICE that the hearing shall be conducted in accordance with Article 3 of the New York State Administrative Procedure Act and the New York State Department of Labor Adjudication Plan as established by 12 NYCRR 701 et. seq. and that all parties are required to produce in advance at least three (3) copies of all documents they intend to introduce as evidence.

TAKE FURTHER NOTICE that it is intended that this hearing shall be conducted by audio-video conferencing. The Hearing Officer and the Department's assigned counsel will be present in Albany and will appear via audio-video conference, all other parties may appear in the aforementioned hearing room and location of the Department of Labor, or at their option, the parties may elect to appear in person before the Hearing Officer at the offices of the New York State Department of Labor, State Office Building Campus, Building 12, Room 266C, Albany, New York.

All parties are required to produce at the remote hearing location at least one (1) copy of all documents they intend to introduce as evidence. In addition, all parties must provide two (2) copies of all documents they intend to introduce as evidence, appropriately marked as exhibits, to New York State Department of Labor, State Office Building Campus, Building 12, Room 266C, Albany, New York, at least 72 hours prior to the commencement of the hearing.

TAKE FURTHER NOTICE that Respondents CUSTOM TREE CARE, INC., GREG GATHERS, "LOOKS GREAT" SERVICES, INC., and KRISTIAN AGOGLIA are required to file an ANSWER in writing at least fourteen (14) days prior to the date of this hearing. Said Answer shall contain a specific admission, denial or explanation of each of the material facts alleged in the Notice. Such a denial may be upon information and belief or a denial of knowledge or information sufficient to form a belief as to the allegation. The Answer must also contain a statement of any facts upon which Respondent relies for an affirmative defense. Said Answer shall be personally delivered or served by certified mail, return receipt requested, upon the Hearing Officer designated above and the Department of Labor attorney assigned to this case as set forth below.

At the Hearing Officer's discretion, upon receipt of Respondents' Answers, or written notice of appearance, the hearing officer may conduct a telephone conference with all parties who have appeared in the proceeding, at which time the hearing officer will review the evidentiary requirements and audio-video conference procedures.

TAKE FURTHER NOTICE that any request for an adjournment must be made directly to the Hearing Officer designated above, with notification to the Department of Labor attorney assigned to this case at least fourteen (14) days prior to the scheduled hearing date. The request shall be in writing and shall set forth the reasons therefore, the position of the other party or parties, and offer alternate hearing dates.

DATED: September 9, 2013
Albany, New York



Peter M. Rivera
Commissioner of Labor

TO:

Custom Tree Care, Inc.
3722 SW Spring Creek Lane
Topeka, KS 66610-1221

Custom Tree Care, Inc.
P.O. Box 67593
Topeka, KS 66667

Greg Gathers
Custom Tree Care, Inc.
3722 SW Spring Creek Lane
Topeka, KS 66610-1221

"Looks Great" Services, Inc.
7 Lawrence Hill Road
Huntington, New York 11743

Kristian Agolia
7 Lawrence Hill Road
Huntington, New York 11743

Mark N. Reinharz, Esq.
Bond Schoeneck & King
1399 Franklin Ave
Garden City, New York 11530

MTA/Long Island Railroad Contract Admin
90-27 Sutphin Blvd
Jamaica, New York 11435

Nassau County Department of Public Works
170 Cantiague Rock Road
Hicksville, New York 11801

ALL EMPLOYEES

James Rogers
Deputy Commissioner of Labor
for Business and Labor Affairs
New York State Department of Labor
9 Bond Street
Brooklyn, New York 11201

Jerome Tracy, Hearing Officer
Administrative Adjudication Unit
New York State Department of Labor
State Office Building Campus
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Christopher Alund, Director
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For the Department

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New York State Department of Labor
State Office Building Campus
Building 12, Room 509
Albany, New York 12240-0005

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

LOOKS GREAT SERVICES, INC.,

Plaintiff,

-against-

NASSAU COUNTY, NEW YORK, NASSAU
COUNTY DEPARTMENT OF PUBLIC WORKS,
MTA LONG ISLAND RAIL ROAD, THE TOWN
OF HUNTINGTON, NEW YORK and THE TOWN
OF HEMPSTEAD, NEW YORK.

Defendants.

Index No.

VERIFIED COMPLAINT

Plaintiff LOOKS GREAT SERVICES, INC., by its attorneys, SMITH, CURRIE & HANCOCK LLP and ZETLIN & DE CHIARA, LLP, as and for its Verified Complaint against the above Defendants, alleges as follows:

PARTIES

1. Looks Great Services, Inc. ("Looks Great") operates from its principal office at 7 Lawrence Hill Road, Huntington, New York 11743 and is incorporated in Delaware.
2. Nassau County is a New York County with its principal office located at 1550 Franklin Avenue, Mineola, New York 11501.
3. Nassau County Department of Public Works ("DPW") is an agency of Nassau County, New York located at 1194 Prospect Avenue, Westbury, New York 11590-2723.
4. MTA Long Island Rail Road ("MTA LIRR") is an agency of the New York Metropolitan Transportation Authority located at 90-27 Sutphin Boulevard, 3 Floor, MC 0335, Jamaica, New York 11435.

5. The Town of Huntington (“Huntington”) is a municipality located at 100 Main Street, Huntington, New York 11743.

6. The Town of Hempstead (“Hempstead”) is a municipality located at Hempstead Town Hall, One Washington Street, Hempstead, New York 11550.

7. This is a Complaint for monetary relief arising out of a Professional Services Agreement between the parties.

FACTUAL BACKGROUND

I. Introduction

8. Looks Great provides a variety of services, including disaster relief and recovery services.

9. As set forth more fully below, Looks Great exhausted virtually all of its corporate resources to enable Nassau County and its citizens to recover quickly from Superstorm Sandy’s devastation. In fact, the City of Long Beach issued a proclamation recognizing Looks Great’s civic Earth Day donation and herculean efforts to efficiently, expeditiously and effectively speed the City’s recovery. Exhibit A. After the work was substantially complete in letters dated May 3, 2013 and June 4, 2013 in letters accompanying the Proclamation, Long Beach wrote Kristian Agoglia, the owner of Looks Great, declaring:

Again, thank you for all you did for our beautiful City by the Sea. As summer approaches and the flowers and trees blossom, thousands of residents and visitors will enjoy and appreciate their beauty, thanks to you and Looks Great Services.

10. Nassau County and other contracting agencies induced Looks Great to perform by promising to pay within ten (10) days of invoicing. See Professional Services Agreement at Exhibit D, p. 2, Article 3 (“LGS shall be paid within 10 days of submitting a complete invoice.”).

11. Each tree cutting, pickup of sand and storm debris, and load of debris hauled was directed and monitored by representatives of the Defendants and painstakingly documented on thousands of work tickets approved and signed or otherwise authorized, by representatives of the Defendants. Examples of such work tickets are attached as Exhibit B. All the work was Emergency Debris Removal Work from Superstorm Sandy and no public works requirements were included or intended to be included in Looks Great's Professional Services Agreement. The Professional Services Agreement was drafted by Looks Great and executed by Nassau County. The Supplemental Agreements, however, were mainly drafted by Nassau County representatives.

12. Looks Great collected, organized and assimilated these work tickets summarizing the quantities of work successfully completed and applying those quantities to the contract unit prices. Invoices were generated from this information and reviewed, reconciled and approved by Defendants' representatives. The invoices are undisputed. A copy of a sample invoice is attached at Exhibit C. The sample does not include the voluminous supporting information submitted with the invoice.

13. Defendants long ago accepted and approved Looks Great invoices but have failed to pay \$15,626,984.31 in accepted and approved invoices, crippling Looks Great's ability to continue its work. These amounts were much greater but were reduced after Nassau County paid \$11,982,990.11 on June 26, 2013 and Long Island Rail Road paid \$848,735.95 on June 28, 2013.

14. Besides Nassau County representatives signing and approving each work ticket for the Nassau County work, Nassau County representatives also signed and approved each invoice billed to Nassau County. The other Defendants similarly approved Looks Great's work and billings.

15. Due to Defendants' refusal to pay for work they ordered and approved, Looks Great could not help other disaster victims and perform relief work for the victims of the Oklahoma tornadoes because Nassau County and the other Defendants failed to pay the amounts the County and other Defendants owe in the amount of \$15,626,984.31. Looks Great's ability to respond to other customers in New York and throughout the United States has likewise been hampered by the Defendants' direction to Looks Great to work and the Defendants' refusal to pay after Looks Great completed its work.

II. Competition, Award and Performance of Looks Great's Professional Services Agreement

16. Looks Great submitted a proposal using the competitive proposal process specified by Nassau County to provide emergency services after a disaster. Looks Great and Nassau County negotiated a pre-event Professional Services Agreement naming the Department of Public Works ("DPW") as Nassau County's contracting representative. Nassau County chose Looks Great as the successful offeror and awarded Looks Great the Professional Services Agreement. Looks Great and DPW executed the pre-event Professional Services Agreement on August 26, 2011 (the "Services Agreement"). The Services Agreement contains a five-year term with additional five one year extensions. A copy of the executed Services Agreement is attached as Exhibit D together with all the Supplemental Agreements germane to this dispute.

17. The Services Agreement was limited to disaster relief cleanup services to include debris removal. The Services Agreement did not include work related to the construction, repair, or maintenance of fixed public structures. The work required by the Professional Services Agreement was emergency debris removal work and not routine maintenance or construction work.

18. Per the Services Agreement, the DPW would issue task orders for specific work as described in Exhibit A to the Services Agreement. In return for performing this work, Looks Great would receive payment in accordance with the contract price list included in Exhibit A to the Services Agreement (attached at Exhibit D to this Verified Complaint). For services within Looks Great's scope of work but not covered by the fee schedule in Exhibit A to the Services Agreement, Looks Great would perform the work on a negotiated lump sum or not-to-exceed amount. The Services Agreement also included an escalation clause allowing Looks Great and DPW to set new rates on a yearly basis.

19. Emergency debris removal services require rapid mobilization and intense performance of large quantities of work to complete the work in a short period of time and minimize the effects of the disaster on the public. In consideration for this accelerated performance of potentially massive amounts of work, Nassau County agreed to pay Looks Great "within 10 days of submitting a complete invoice" in the Professional Services Agreement which was adopted by the other Defendants.

III. Looks Great Successfully Performed the Recovery Work after Hurricane Irene.

20. Shortly after executing the Services Agreement, Hurricane Irene made landfall in New York on or around August 28, 2011. In response to the damage caused by Hurricane Irene, the DPW activated the Services Agreement and authorized Looks Great to perform disaster relief cleanup services. Looks Great responded immediately and successfully completed its cleanup work. The Nassau Interim Finance Authority approved the purchase order for full payment, a decision ratified unanimously by the Legislature. Accordingly, Looks Great was paid in full for the purchase order related to Hurricane Irene in the amount of \$6,697,271.87.

IV. Looks Great Successfully Completed the Recovery Work after Superstorm Sandy.

21. On or around October 29, 2012, Superstorm Sandy made landfall in New York. Super Storm Sandy's landfall caused extensive flooding and damage to the eastern United States seaboard, including Nassau County.

22. As a result of the storm's damage, DPW activated Looks Great's Services Agreement and began issuing task orders for disaster relief services. These services were similar to the services Looks Great had previously performed in response to Hurricane Irene. Looks Great responded immediately in order to help mitigate the devastation left behind by Superstorm Sandy. Additionally, Looks Great entered into separate debris cleanup services contracts with the MTA Long Island Rail Road ("MTA LIRR") on October 29, 2012, the City of Long Beach, New York ("Long Beach") on October 30, 2012, the Town of Huntington, New York ("Huntington") on November 1, 2012, and the Town of Hempstead, New York ("Hempstead") on November 8, 2012. These contracts adopted the Service Agreement at Exhibit D and were identical in scope and terms to the Services Agreement.

23. Looks Great, the DPW and Nassau County executed a supplemental agreement on November 3, 2012 providing for additional rates and services that were within Looks Great's contractual scope of work. A purchase order was referenced by Nassau County in the Agreement to provide a means for funding the services, but not to vary the terms of the Services Agreement or to add additional terms.

24. Every work item completed by Looks Great was documented by work tickets signed and approved by County Representatives. Thousands of tickets were completed verifying the properly completed work.

25. Looks Great successfully completed every task order issued under the Services Agreement. Looks Great has not been notified of any deficiencies related to the work performed under the task orders except for some minor property damage claims submitted by Nassau County that amount to less than \$30,000.00, which Looks Great is working to resolve. See Exhibit P.

V. Looks Great Properly Invoiced for its Work According to its Contract.

26. In accordance with the Services Agreement, Looks Great has submitted invoices, requesting payment for the work Looks Great performed. After each invoice was submitted, the DPW and Looks Great reconciled every billing amount to each work ticket. Once the invoices were reconciled to the work tickets, the DPW signed and approved the invoices for payment. A sample of a signed and approved invoice is provided at Exhibit C.

27. DPW has not objected to the form or substance of Looks Great's invoices, work tickets, or even the amounts owed and outstanding. In fact, not only has the DPW not contested that Looks Great is owed the additional funds, but the Nassau Office of the Comptroller ("Comptroller"), after performing an audit, has stated it believes the amounts are owed to Looks Great. In May 7, 2013 letters to the Nassau County District Attorney and the New York State Attorney General, the Comptroller admitted that "the amounts indicated on [Looks Great's] invoices are accurate." Copies of these letters are attached as Exhibit E.

28. Also on May 7, 2013, the Comptroller issued a news release exulting Nassau County's cost savings for cleanup services as compared against New York City's. Nassau County debris cleanup cost was, on a unit-by-unit measure, up to 32% less than New York City's cost. In the Comptroller's own words, "tax payer money was well spent and our economy was

able to rapidly recover due to the rapid actions by the Mangano Administration to clear the debris." A copy of this press release is attached as Exhibit F.

29. The Comptroller issued another news release on May 15, 2013 addressing the May 7, 2013 letters to the Nassau County District Attorney and New York State Attorney General. In this news release, the Comptroller admitted that the DPW had submitted and authorized Looks Great's claim for payment, that Looks Great's payment met all the requirements for reimbursement by FEMA to Nassau County, and that the County must make the payment in a timely manner. A copy of this press release is attached as Exhibit G.

30. Looks Great understands that Defendants have been approved for 90% reimbursement from FEMA and 5% from the State for the amounts expended by the Recovery Effort under Looks Great's Professional Services Agreement. Therefore, Defendants will only ultimately pay 5% of the amounts owed for these emergency and critically needed services.

31. Nassau County and its DPW owe Looks Great for the outstanding task order amounts. Per the Services Agreement, the DPW was required to pay Looks Great within ten days of Looks Great's submittal of a completed invoice. Exhibit D, Article 3. Likewise, the other Defendants ordered work, accepted the work and failed to pay Looks Great. No provision in the Professional Services Agreement allows for any withholding or other non-payments.

**VI. Defendants have Refused to Pay for the Successfully Completed Work
as Required by the Contract.**

32. Despite Looks Great's successful performance, the DPW withheld payment in violation of the Services Agreement. Looks Great has requested payment from the DPW but has yet to receive any response presenting a valid and proper reason for the DPW's failure to make the payment. The other Defendants have similarly improperly refused to pay the amounts they owe.

33. As a result of Defendants' unjustifiable withholding of payment, and accompanying breaches of the Services Agreement, Looks Great's ability to conduct future business has been severely hampered. Additionally, Looks Great has been unable to fully pay its subcontractors due to the Defendants' failure to release earned funds and replenish its working capital and line of credit. This nonpayment has crippled Looks Great's ability to perform additional work.

COUNT I – BREACH OF CONTRACT
OCTOBER 26, 2012 TASK ORDER

34. Looks Great realleges and reaffirms all the allegations in paragraphs 1 through 33 of the Complaint.

35. The DPW issued the first task order on or around October 26, 2012. This task order required Looks Great to mobilize on October 29th, 2012. Looks Great successfully completed this task order on or around February 8, 2013. DPW has not provided notice of any deficiencies associated with this task order.

36. The DPW signed and approved every invoice Looks Great submitted under this task order. DPW signed and approved the last invoice for this task order on March 15, 2013.

37. Per the Services Agreement, the DPW agreed to pay Looks Great ten days after receiving the invoices.

38. The DPW failed to pay Looks Great the agreed upon amounts.

39. Per the October 26, 2012 task order and giving credit for a payment made on June 26, 2013 (the check was dated April 30, 2013 but was only released to Looks Great on June 26, 2013; two months later), the DPW owes Looks Great \$13,821,591.75 in outstanding invoices.

40. The DPW has not disputed the amounts in the invoices or that the work was properly performed per the Services Agreement.

41. During performance of the work, Looks Great provided Nassau County a Certificate of Insurance issued to the Nassau County Department of Public Works on December 21, 2012 by Looks Great's insurance carrier. The Certificate applied to work performed by Looks Great Services, Inc. and stated that "Nassau County Department of Public Works is included as additional insured with respect to the General Liability policy where required by written contract." See Exhibit O at p. 8.

42. After performance of the work, Nassau County requested Looks Great to supplement the agreement by adding a broad indemnity, duty to defend and hold harmless provision. Looks Great was unable to obtain consent from its carrier to add this provision since the work was already complete.

43. Nassau County has provided notice that it is withholding the contract balance based upon its indemnity, duty to defend and hold harmless request and insurance requests. See Exhibit O at pp. 3-5. These requests were made after completion of the work.

44. Nassau County's refusal to pay is improper under the contract. Looks Great has provided all required insurances and indemnities as well as is working to resolve homeowner claims provided by the County (many of which did not arise from Looks Great's work). Attached at Exhibit P is a copy of Looks Great's latest response to resolve the homeowner claims.

45. Looks Great submitted a demand letter, through counsel, on May 9, 2013, requesting payment of the outstanding balance of \$25,804,581.86. The DPW paid \$11,982,990.11 on June 26, 2013 by check dated April 30, 2013, but still owes \$13,821,591.75. A copy of the May 9, 2013 demand letter is attached as Exhibit H.

46. By failing to pay Looks Great the remaining balance for this task order, the DPW has breached the Services Agreement. Accordingly, this Court should award Looks Great at minimum the outstanding balance of \$13,821,591.75 plus interest and any other proper damages.

COUNT II – BREACH OF CONTRACT
OCTOBER 29, 2012 TASK ORDER

47. Looks Great realleges and reaffirms all the allegations in paragraphs 1 through 33 of the Complaint.

48. On October 29, 2012, Looks Great and the MTA LIRR entered into a separate contract for debris cleanup services. The MTA LIRR confirmed, activated and issued a Notice to Proceed for this work by letter dated October 29, 2012. See Exhibit 1 of Exhibit I attached to this Complaint.

49. Instead of negotiating a new contract due to the emergency circumstances, Looks Great and MTA LIRR agreed to use the same Services Agreement that Looks Great and the DPW had previously executed as stated by the MTA LIRR in its Notice to Proceed letter. Looks Great successfully completed this task order on or around December 22, 2012. Looks Great has not been made aware of any deficiencies associated with this task order.

50. Per their contract, MTA LIRR had ten days from receiving the invoices to make payment.

51. MTA LIRR failed to timely pay Looks Great the agreed upon amounts.

52. Per the October 29, 2012 contract, MTA LIRR owed Looks Great \$985,725.97.

53. MTA LIRR has not disputed that the amount is owed per the contract. However, the MTA LIRR has improperly withheld \$136,990.02 from Looks Great's invoices for what the MTA LIRR regards as prevailing wage issues. The work performed under the Service Agreement is Emergency Debris Removal and not Public Works. Public Works requirements do

not apply to these Emergency Debris Removal contracts. See Exhibit D for a copy of the Professional Services Agreement.

54. Looks Great submitted a demand letter, through counsel, on May 15, 2013, demanding payment of the outstanding balance of \$985,725.97. A copy of this letter is attached as Exhibit I. MTA LIRR paid a portion of the amounts owed but improperly withheld \$136,990.02.

55. By failing to pay Looks Great the remaining balance for this task order, MTA LIRR has breached the Services Agreement. Accordingly, this Court should award Looks Great the outstanding balance of \$136,990.02, plus interest and any other proper damages.

COUNT III – BREACH OF CONTRACT
NOVEMBER 1, 2012 TASK ORDER

56. Looks Great realleges and reaffirms all the allegations in paragraphs 1 through 33 of the Complaint.

57. On November 1, 2012, Looks Great and Huntington entered into a separate contract for debris cleanup services as authorized by the Town's letter attached at Exhibit 1 to Exhibit J attached to this Complaint. Instead of negotiating a new contract due to the emergency conditions, Looks Great and Huntington agreed to use the same contract that Looks Great and the DPW had previously executed. Thus, the contract between Looks Great and Huntington contained virtually identical terms and services as the Services Agreement between Looks Great and the DPW. Looks Great successfully completed this task order on or around March 15, 2013. Looks Great has not been made aware of any deficiencies associated with this task order.

58. Per its contract, Huntington had ten days from receiving the invoices to make payment.

59. Huntington failed to pay Looks Great the agreed upon amounts.

60. Per the November 1, 2012 contract, Huntington owes Looks Great \$781,167.91.

61. Huntington has not disputed that the amount is owed per the contract.

62. Huntington has not provided any valid contractual reasons for withholding payment of \$781,167.91.

63. Looks Great submitted a demand letter, through counsel, on May 16, 2013, demanding payment of the outstanding balance of \$781,167.91. Huntington failed to respond to Looks Great's demand letter. A copy of this letter is attached as Exhibit J.

64. By failing to pay Looks Great the remaining balance for this contract, Huntington has breached the Services Agreement. Accordingly, this Court should award Looks Great the outstanding balance of \$781,167.91, plus interest and any other proper damages.

COUNT IV – BREACH OF CONTRACT
NOVEMBER 8, 2012 TASK ORDER

65. Looks Great realleges and reaffirms all the allegations in paragraphs 1 through 33 of the Complaint.

66. On November 8, 2012, Looks Great and Hempstead entered into a separate Memorandum of Understanding for debris cleanup services. See Exhibit 1 to Exhibit K attached to this Complaint. Instead of negotiating a new contract due to the emergency conditions, Looks Great and Hempstead agreed to use the same contract that Looks Great and the DPW had previously executed in 2011 (the Professional Services Agreement). Thus, the contract between Looks Great and Hempstead contained virtually identical terms and services as the Services Agreement between Looks Great and the DPW. Looks Great successfully completed this work on or around January of 2013. Looks Great has not been made aware of any deficiencies associated with this task order.

67. The contract required Hempstead to pay within ten days from receiving the invoices.

68. Hempstead failed to pay Looks Great the agreed upon amounts.

69. Per the November 8, 2012 contract, Hempstead owes Looks Great \$887,234.63.

70. Hempstead has not disputed that the amount is owed per the contract.

71. Hempstead has not provided any valid contractual reasons for withholding payment of \$887,234.63.

72. Looks Great submitted a demand letter, through counsel, on May 15, 2013, demanding payment of the outstanding balance of \$887,234.63. Hempstead failed to respond to Looks Great's demand letter. A copy of this letter is attached as Exhibit K.

73. By failing to pay Looks Great the remaining balance for this contract, Hempstead has breached its agreement. Accordingly, this Court should award Looks Great the outstanding balance of \$887,234.63, plus interest and any other proper damages.

COUNT V – BREACH OF THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

74. Looks Great realleges and reaffirms all the allegations in paragraphs 1 through 73 of the Complaint.

75. All contracts in New York imply the covenant of good faith and fair dealing in the course of performance.

76. This covenant requires that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract."

See 511 West 232nd Owners Corp. v. Jennifer Realty co., 773 N.E.2d 496 (N.Y. 2002).

77. After investment of its own and its subcontractors' resources, Looks Great successfully completed every task order that the DPW awarded. Looks Great also successfully completed its contracts with MTA LIRR, Huntington, Hempstead, and Long Beach.

78. Looks Great timely submitted its invoices to the DPW, MTA LIRR, Huntington, Hempstead, and Long Beach. These invoices complied with the Services Agreement's requirements. The DPW, MTA LIRR, Huntington, Hempstead, and Long Beach did not object to the form or substance of these invoices.

79. Despite successfully completing every task order and contract, the DPW, MTA LIRR, Huntington, Hempstead, and Long Beach have wrongfully withheld payment from Looks Great.

80. The DPW, MTA LIRR, Huntington, Hempstead, and Long Beach have failed to present any valid reasons for withholding Looks Great's payments.

81. By withholding payment, the DPW, MTA LIRR, Huntington and Hempstead have injured and impeded Looks Great's right to receive the "fruits of the contract."

82. More specifically, the DPW, MTA LIRR, Huntington, Hempstead, and Long Beach have deprived Looks Great of payments that Looks Great has earned. Looks Great fully completed each task order and contract and is now entitled to the mutually agreed upon payment amounts.

83. Additionally, the DPW's, MTA LIRR's, Huntington's, Hempstead's, and Long Beach's actions in withholding payment have adversely affected Looks Great's business. As a result, Looks Great has suffered tangible and intangible losses. See Exhibit M for correspondence detailing these lost opportunities in Moore, Oklahoma after that community's tragic tornadoes. Attached at Exhibit N is a copy of a letter from Looks Great's bank closing

Looks Great's working capital financial line of credit, declaring a default and assessing penalties and interest. These loan monies were used, in whole or in part, by Looks Great to finance the work for Defendants. Looks Great was only able to repay these monies when Nassau County partially paid the amounts due Looks Great on June 26, 2013 (though the check was dated April 30, 2013). Additionally, Looks Great has been unable to fully pay subcontractors who performed work on the task orders. Despite Looks Great having conveyed value to the DPW, MTA LIRR, Huntington and Hempstead by successfully performing every task order and contract, the DPW, MTA LIRR, Huntington and Hempstead have deprived Looks Great of the benefit of its bargain. Looks Great has lost other work due to the stigma of Defendants' failure to pay the amounts they owe, the depletion of Looks Great's financial resources and injury to its subcontractor relationships.

84. By wrongfully withholding these amounts, the DPW, MTA LIRR, Huntington and Hempstead have breached the implied duty of good faith and fair dealing. This breach has damaged Looks Great in the amount of the outstanding task orders and contracts. Accordingly, this Court should award Looks Great the sum of the outstanding task orders and contracts, which is equal to \$15,626,984.31, plus interest and any other proper damages suffered by Looks Great.

COUNT VI – FORESEEABLE CONSEQUENTIAL DAMAGES

85. Looks Great realleges and reaffirms all the allegations in paragraphs 1 through 84 of the Complaint.

86. As a result of the DPW's, MTA LIRR's, Huntington's and Hempstead's breaches of the Services Agreement and contracts by failing to pay within ten days of invoicing, Looks Great incurred foreseeable consequential damages including, but not limited to, lost profits, lost opportunities, additional borrowing costs, loss of working capital, interest costs and injury to its

subcontractor relationships. Additionally, Looks Great has suffered reputational losses among its subcontractors and in the industry as a result of the DPW's, MTA LIRR's, Huntington's and Hempstead's breaches of the Services Agreement and contracts.

87. The consequential damages resulting from the DPW's, MTA LIRR's, Huntington's and Hempstead's breach of contract were foreseeable. Simply put, it was reasonably foreseeable that the DPW's, MTA LIRR's, Huntington's, Hempstead's, and Long Beach's failures to timely pay Looks Great would cause these damages. The Parties had negotiated a 10-day payment deadline which the Parties included in the Contract that the Defendants signed and used to induce Looks Great to perform these emergency services. Additionally, Looks Great has submitted demands for payment, including demand letters, both requesting payment and detailing the ongoing costs and damages Looks Great was continually incurring as a result of the breaches. Copies of these letters are attached as Exhibits H-L.

88. The Defendants' actions have also emboldened the City of Long Beach to refuse to pay Looks Great \$8,445,031.15 that it indisputably owes Looks Great. Looks Great will also be forced to file suit to collect these monies from the City of Long Beach based on Looks Great's Demand for Payment issued to the City on June 19, 2013. See Exhibit L.

89. Accordingly, this Court should award Looks Great its foreseeable consequential damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Looks Great prays that the Court enters judgment against Defendants the DPW, Nassau County, MTA LIRR, Huntington and Hempstead, as follows:

1. For Count I – Against DPW and Nassau County - Breach of Contract, at minimum, the outstanding balance arising from the October 26, 2012 task order equal to \$13,821,591.75, plus interest as allowed by law;
2. For Count II – Against MTR LIRR - Breach of Contract, at minimum, the outstanding balance arising from the October 29, 2012 task order equal to \$136,990.02, plus interest as allowed by law;
3. For Count III – Against Huntington - Breach of Contract, at minimum, the outstanding balance arising from the November 1, 2012 task order equal to \$781,167.91, plus interest as allowed by law;
4. For Count IV – Against Hempstead - Breach of Contract, at minimum, the outstanding balance arising from the November 8, 2012 task order equal to \$887,234.63, plus interest as allowed by law;
5. For Count V – Against all Defendants - Breach of the Implied Duty of Good Faith and Fair Dealing, at minimum, the outstanding balance arising from the task orders equal to \$15,626,984.31, plus interest as allowed by law;
6. For Count VI – Against all Defendants - Foreseeable Consequential Damages, such damages as were reasonably foreseeable based on Defendants' breaches of the Services Agreement and related contracts by withholding payment. The damages include lost profits, additional borrowing costs, loss of working capital, reputational damages, and interest costs in an amount to be determined at trial.
7. For such other and further relief as the Court deems appropriate and just.

JOB DESCRIPTION Electrician

DISTRICT 4

ENTIRE COUNTIES

Nassau, Suffolk

WAGES

Per Hour: 07/01/2012

Tree Trimmer/
Line Clearance Specialist \$28.63

NOTE: This Rate Applies For Electrical Line Clearance and Long Island Rail Road Right of Way(s) ONLY.

SUPPLEMENTAL BENEFITS

SUPPLEMENTAL BENEFITS

Per Hour:

Tree Trimmer/
Line Clearance Specialist \$13.00

OVERTIME PAY

See (B, E, *K, P) on OVERTIME PAGE

*K. Plus the Holiday Pay

HOLIDAY

Paid: See (5, 6, 8, 16, 23, 24, 25, 26) on HOLIDAY PAGE

Overtime: See (5, 6, 8, 16, 23, 24, 25, 26) on HOLIDAY PAGE