

IN THE MATTER OF
FERRANDINO & SON INC.

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ASSURANCE OF VOLUNTARY COMPLIANCE

WHEREAS, George Jepsen, Attorney General of the State of Connecticut, and Jonathan A. Harris, Commissioner of the Department of Consumer Protection (“DCP Commissioner”), conducted an investigation into Ferrandino & Son Inc. (“F&S”), relating to F&S's business practices with respect to subcontractors located in Connecticut (“Investigation”).

A. BACKGROUND

WHEREAS, based upon the Investigation, the Connecticut Attorney General and the DCP Commissioner have made the following findings:

1. F&S is a "service supply chain management company" and a provider of interior and exterior property maintenance services. F&S's corporate headquarters are located at 71 Carolyn Blvd., Farmingdale, NY 11735.
2. The types of property maintenance services that F&S offers include, but are not limited to, snow and ice removal for commercial business locations.
3. F&S provides snow and ice removal services to over a hundred commercial business sites within Connecticut as part of a business relationship with Commercial Real Estate Services Inc. ("CBRE"). CBRE is a national provider of property maintenance services for businesses with commercial locations throughout the United States. CBRE entered into agreements with F&S to subcontract to F&S the snow

and ice removal services for some CBRE clients with physical business locations within Connecticut.

4. In particular, effective September 1, 2013, F&S and CBRE entered into a contract that requires F&S to provide snow and ice removal services to approximately 125 commercial sites within Connecticut (the "CT Contract"). The CT Contract covers the 2013-2014, 2014-2015, and 2015-2016 snow seasons.

5. F&S provides snow and ice removal services to the commercial sites covered by the CT Contract through its own subcontractor agreements with local small businesses ("CT Subcontractors") specializing in snow removal and exterior property maintenance.

6. Pursuant to the terms of the CT Contract and F&S's agreements with the CT Subcontractors, F&S is obligated to pay the CT Subcontractors (a) compensation for the snow and ice removal services and (b) a bonus payment at the end of each snow season if the total snow fall at the end of the season is greater than the thirty (30) year historic snowfall average, plus a ten percent (10%) buffer, for that site. The bonus available to the CT Subcontractors is divided into three tiers, with the highest bonus awarded when the actual snowfall at a site is 20.1 inches or more above the thirty (30) year historic snowfall average (plus the ten percent (10%) buffer).

7. F&S represented to the CT Subcontractors that such a bonus would be available in years when there was an above average amount of snow fall and entered into subcontract agreements with each of the CT Subcontractors that included a pricing exhibit that explained the "above historic 30 year snowfall average incentive" calculations for each of the CT Subcontractor's sites. Each pricing exhibit also listed the

30 year "average annual snowfall" that was to be used as the benchmark for purposes of calculating the "30 year snowfall average incentive" for that site.

8. Many of the pricing exhibits in effect for the 2013-2014, 2014-2015, and 2015-2016 snow seasons pursuant to the terms of F&S's agreements with the CT Subcontractors list a 30 year "average annual snowfall" for the site that is much higher than the actual 30 year "average annual snowfall" for the site according to commonly accepted and verifiable meteorological sources.

9. Accordingly, for many sites covered by the CT Contract and F&S's agreements with the CT Subcontractors, the benchmark used by F&S for purposes of calculating the bonus payment owed to CT Subcontractors was not based on any industry standard or verifiable mathematical calculations of site specific historic snow fall data, and thus was not a valid 30 year snowfall average for that site.

10. The inflated benchmark diminished some of the CT Subcontractor's compensation in that, for snow seasons 2013-2014 and 2014-2015, it was much more difficult for CT Subcontractors to become eligible for a bonus under the "above historic 30 year snowfall average incentive" included in their agreements with F&S. As a result, many CT Subcontractors received either no bonus or a bonus that was at a lower tier – and thus less compensation – than they would have received if F&S had used a 30 year "average annual snowfall" benchmark that was supported by the actual historic snow fall measurements for the site.

11. Additionally, many of the pricing exhibits still in effect for the 2015-2016 snow season continue to use a 30 year "average annual snowfall" benchmark that is much

higher than the actual 30 year "average annual snowfall" for the site according to commonly accepted and verifiable meteorological sources.

12. By continuing to incorporate the inaccurate 30 year "average annual snowfall" benchmark for the 2015-2016 snow season, many CT Subcontractors may receive either no bonus or a smaller bonus than they would have received if F&S had used a 30 year "average annual snowfall" benchmark that was supported by the actual historic snow fall measurements for the site.

13. Since September 1, 2013, the express terms and conditions contained in the CT Contract and F&S's agreements with the CT Subcontractors required that the benchmark used to calculate the bonus owed to CT Subcontractors under the "above historic 30 year snowfall average incentive" be based on historic 30 year average snow fall data. Since September 1, 2013, F&S represented to CT Subcontractors orally and in writing that the benchmark used to calculate the bonus owed under the "above historic 30 year snowfall average incentive" was based on the average of actual 30 year snow fall totals for each of the CT Subcontractor's sites.

14. In the course of its Investigation, on July 3, 2014, the Connecticut Attorney General served F&S with a Civil Investigative Demand ("CID") signed by the DCP Commissioner requiring the production of documents and responses to interrogatories related to the Investigation.

15. On August 25, 2014, F&S produced documents and sworn responses to the CID.

16. In its August 25, 2014 response to the document requests contained in the CID, F&S failed to produce highly probative documents directly relevant to the

Investigation. In addition, F&S's sworn responses to certain interrogatories contradicted information contained in F&S documents and company records.

WHEREAS, based on the findings of the Investigation, the Connecticut Attorney General and the DCP Commissioner have alleged (a) that F&S's representations to CT Subcontractors and systematic creation and use of an artificially inflated benchmark for purposes of calculating the "above historic 30 year snowfall average incentive" owed at many CT sites for snow seasons 2013-2014, 2014-2015, and 2015-2016, may have constituted a deceptive and unfair act or practice in violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. §§ 42-110a et seq; and (b) that F&S's failure to comply timely, fully and accurately with certain information requests propounded in the CID effectively impaired and impeded the Investigation.

WHEREAS, F&S denies the above allegations and is entering into this Assurance of Voluntary Compliance ("AVC") solely for the purpose of resolving the Investigation.

WHEREAS, the Connecticut Attorney General, the DCP Commissioner and F&S have entered into this AVC without any complaint having been filed or any adjudication of any issue of fact or law herein and without this AVC constituting any admission by, any evidence against, or any estoppel against F&S.

WHEREAS, the Connecticut Attorney General and the DCP Commissioner find that the relief and agreements contained in this AVC are appropriate and in the public interest, and are willing to accept this AVC as a resolution of the Investigation. The Connecticut Attorney General, the DCP Commissioner and F&S wish to enter into this AVC to resolve all issues related to the Investigation.

NOW THEREFORE, the Connecticut Attorney General, the DCP Commissioner and F&S hereby enter into this AVC and hereby agree as follows:

B. MONETARY RELIEF

1. By no later than fifteen (15) business days after the date of this AVC, F&S shall provide restitution to the agreed upon CT Subcontractors totaling \$101,345.22 for snow season 2013-2014 and totaling \$85,750.68 for snow season 2014-2015. Any payments made hereunder for purposes of restitution shall be by check.

2. In conjunction with the disbursement of the agreed to monetary payments to the agreed upon CT Subcontractors, F&S shall send a notice (“Notice”), as set forth in **Schedule A**, explaining the reasons for the monetary payment.

3. F&S shall provide a written report with supporting documentation to the Connecticut Attorney General and the DCP Commissioner that verifies the monetary payments made to CT Subcontractors (“Reimbursement Report”). F&S shall provide the Reimbursement Report within forty-five (45) business days of the date of this AVC and then thereafter on a monthly basis until the monetary payments have been fully disbursed, or until the first anniversary of the effective date of the AVC, whichever comes earlier.

4. To the extent that any of the CT Subcontractors receiving a monetary payment from F&S cannot be located for purposes of disbursing the monetary payment, such CT Subcontractors shall be identified in the Reimbursement Report and such funds shall be escheated to the Office of the Connecticut Treasurer and held in reserve for the CT Subcontractor pursuant to the procedure set forth in Conn. Gen. Stat. §§ 3-64a; 3-65a; and 3-66a.

5. The Connecticut Attorney General, the DCP Commissioner and F&S expressly acknowledge and agree that any disbursement of funds pursuant to the requirements of Section B of this AVC shall not be construed as proof that F&S has violated any law or regulation.

6. For the remaining 2015-2016 snow season covered by F&S's agreements with the CT Subcontractors, F&S will use 30 year average snow fall data from the company Weather Works, Inc., as set forth in **Schedule B**, for purposes of calculating the bonus owed to CT Subcontractors under the "above historic 30 year snowfall average incentive."

7. The Connecticut Attorney General, the DCP Commissioner and F&S acknowledge that the CT Subcontractors and reimbursement amounts were identified based on the Investigation and a review by F&S of F&S's records over the relevant time periods. F&S agrees to maintain such documentary evidence and make such documentary evidence available to the Connecticut Attorney General or the DCP Commissioner upon request. If any CT Subcontractor produces documentary evidence to F&S that demonstrates F&S contract and/or payment records contained material errors or omissions, F&S further agrees to attempt to resolve the dispute by dealing with the CT Subcontractor in good faith and utilizing the agreed upon methodology for calculating CT Subcontractor reimbursements. In the event that a CT Subcontractor contacts F&S directly about a revised bonus payment, F&S will include reference in its Reimbursement Report to such contact and an explanation as to how such contact was resolved.

8. By no later than fifteen (15) days after the date of this AVC, F&S shall pay the State of Connecticut a civil penalty in the amount of fifty thousand dollars (\$50,000.00). The civil penalty shall be paid by cashier's check.

C. GENERAL PROVISIONS

1. If F&S commits a material breach of any of the obligations described herein, the Connecticut Attorney General and DCP Commissioner may in their sole discretion terminate the AVC upon written notice to F&S. In the event of such material breach by F&S, (a) any statute of limitations or other time-related defense applicable, if any, to the Investigation and any claims arising from or relating thereto are tolled from and after the execution date of the AVC until the time when the material breach was discovered, and (b) the AVC shall in no way bar or otherwise preclude the Connecticut Attorney General and/or the DCP Commissioner from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Investigation, including, without limitation, using any statements, documents, or other materials provided to the Connecticut Attorney General.

2. The AVC and any dispute related thereto shall be subject to the exclusive jurisdiction of the Superior Court for the Judicial District of Hartford. F&S consents to the personal and subject matter jurisdiction of the Superior Court for the Judicial District of Hartford for the purpose of adjudicating any dispute related to the AVC.

3. No failure or delay by the Connecticut Attorney General or the DCP Commissioner in exercising any right, power, or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or

further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided herein shall be cumulative.

4. F&S enters into this AVC voluntarily and represents and warrants that it is represented by legal counsel, that it has been fully advised of its legal rights in this matter, and that the person(s) signing below are fully authorized to act on its behalf.

5. This AVC may be changed, amended, or modified only by a writing signed by all parties hereto.

6. This AVC and the attached schedules constitute the entire agreement between the Connecticut Attorney General, the DCP Commissioner and F&S and supersede any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of the AVC.

7. The AVC and its provisions shall be effective and binding only when it is signed by all parties.

8. The AVC may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

9. Nothing contained herein shall be construed as relieving F&S of its obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of the AVC be deemed permission to engage in any act or practice prohibited by such laws, regulations, or rules.

10. Unless otherwise provided, all notices as required by the AVC shall be provided as follows:

To the Connecticut Attorney General:

Michael E. Cole
Chief, Antitrust and Government Program Fraud Department

Office of the Connecticut Attorney General
55 Elm Street
PO Box 120
Hartford, CT 06141-0120
Tel. (860) 808-5318
Fax. (860) 808-5387

To the DCP Commissioner:

Jonathan A. Harris, Commissioner
Department of Consumer Protection
165 Capitol Avenue
Hartford CT 06106

To F&S:

Kevin Smith
Chief Operating Officer
Ferrandino & Son, Inc.
901 Jefferson Avenue
Audubon, PA 19407

With a copy to:

J. Edward Gathman, Jr.
Gathman & Bennett, LLP
191 New York Avenue
Huntington, NY 11743

Louis J. Dagostine
Ciulla & Donofrio, LLP
127 Washington Avenue
P.O. Box 219
North Haven, CT 06473

11. Nothing in the AVC shall be construed to prevent any person from pursuing any right or remedy at law which they may have against F&S.
12. If any portion or part of this AVC is held invalid, unenforceable or void for any reason whatsoever, that portion shall be severed from the remainder of the AVC and shall not affect the validity or enforceability of the remaining portions of the AVC.

WHEREFORE, the signatures evidencing assent to this agreement have been affixed hereto on the dates set forth below.

Dated: March ___, 2016

Jonathan A. Harris
Commissioner, Department of Consumer
Protection

By: _____

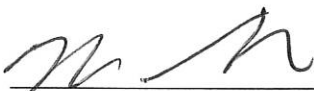
Dated: March ___, 2016

George Jepsen
Attorney General of the State of Connecticut

By: _____

Dated: March 17, 2016

Ferrandino & Son Inc.

By: 

Kevin Smith
Chief Operating Officer