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BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION

In the Matter of:

P17-043

CreSurveys, LTD.,
Unregistered Firm

CONSENT AGREEMENT

Respondent.

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration (the "Board") and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to Arizona Revised Statutes ("A.R.S.") § 32-101, *et seq.* and Arizona Administrative Code ("A.A.C.") R4-30-120(G), the undersigned party, CreSurveys, LTD. ("Respondent Firm") and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

I. RECITALS

1. The Board has not conducted a hearing nor made a determination on the merits contained herein. Instead, the Board and Respondent Firm have agreed to a full and final settlement of this matter in lieu of formal disciplinary proceedings, pursuant to A.A.C. R4-30-123(B).

2. Respondent Firm has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

3. Respondent Firm understands that it has a right to a public administrative hearing concerning this case. Respondent Firm further acknowledges that, at such formal hearing, Respondent Firm could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent Firm knowingly, voluntarily, and irrevocably waives the right to such an administrative hearing, as well as rights of

1 rehearing, review, reconsideration, appeal, judicial review or any other administrative
2 and/or judicial action concerning the matters set forth herein.

3 4. Respondent Firm affirmatively agrees that this Consent Agreement shall be
4 irrevocable.

5 5. Respondent Firm understands that this Consent Agreement or any part of the
6 agreement may be considered in any future disciplinary action by the Board against it.

7 6. The Consent Agreement, any record prepared in this matter, all investigative
8 materials prepared or received by the Board and all related exhibits and materials, are
9 public records (as defined in A.R.S. § 41-151.18) upon acceptance by the Board of this
10 Consent Agreement and may be retained in the Board's files pertaining to this matter.

11 7. Respondent Firm understands this Consent Agreement deals with Board case
12 number P17-043 involving allegations that Respondent Firm engaged in conduct that
13 could subject it to discipline under the Board's statutes and rules. The investigation into
14 these allegations against Respondent Firm shall be concluded upon the Board's adoption
15 of this Consent Agreement.

16 8. Respondent Firm understands that this Consent Agreement does not
17 constitute a dismissal or resolution of any other matters currently pending before the
18 Board, if any, and does not constitute any waiver, express or implied, of the Board's
19 statutory authority or jurisdiction regarding any other pending or future investigation,
20 action or proceeding.

21 9. Respondent Firm also understands that acceptance of this Consent
22 Agreement does not preclude any other agency, subdivision, or officer of this State from
23 instituting any other civil or criminal proceedings with respect to the conduct that is the
24 subject of this Consent Agreement.

25 10. Respondent Firm acknowledges and agrees that, upon signing this Consent
26 Agreement and returning this document to the Board's Executive Director, Respondent
27 Firm may not revoke acceptance of the Consent Agreement or make any modifications to
28 the document regardless of whether the Consent Agreement has been signed on behalf of

1 the Board. Any modification to this original document is ineffective and void unless
2 mutually agreed by the parties in writing.

3 11. This Consent Agreement is subject to the approval of the Board and is
4 effective only when accepted by the Board and signed on behalf of the Board. If the
5 Board does not accept this Consent Agreement, the Board retains its authority to hold a
6 formal administrative hearing pursuant to A.R.S. § 32-128(D). In the event that the
7 Board does not approve this Consent Agreement, it is withdrawn, shall be of no
8 evidentiary value, and shall not be relied upon nor introduced in any action by any party.
9 Respondent Firm agrees that should the Board reject this Consent Agreement and this
10 case proceeds to hearing, Respondent Firm shall assert no claim that the Board was
11 prejudiced by its review and discussion of this document or any records relating thereto.

12 12. If a court of competent jurisdiction rules that any part of this Consent
13 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
14 shall remain in full force and effect.

15 13. Respondent Firm agrees that any violation of this Consent Agreement may
16 result in an enforcement action under A.R.S. §§ 32-106.02 and 32-145.

17 14. Respondent Firm agrees that the Board will adopt the following Findings of
18 Fact, Conclusions of Law and Order.

19 II. FINDINGS OF FACT

20 1. The Board is the duly constituted authority for the regulation and control of
21 the practice of several professions, including the practice of surveying. A.R.S. § 32-101,
22 *et seq.* Pursuant to A.R.S. §§ 32-106 and 32-122.01, the Board possesses jurisdiction
23 over the subject matter and over Respondent Firm.

24 2. Respondent Firm enters into this Consent Agreement by and through its
25 President, Wendell Sommers ("Sommers"), who has the authority to act on behalf of
26 Respondent Firm and bind it to this Consent Agreement.

27 3. On or about October 25, 2016, the Board directed staff to investigate
28 Respondent Firm and Sommers to determine whether Respondent Firm and Sommers

1 were engaging in land surveying without firm registration, in possible violation of A.R.S.
2 §§ 32-121 and 32-141.

3 4. Respondent Firm is an Ohio entity that specializes in providing a one-stop
4 resource for real estate due diligence, coordinating such services as building inspections,
5 zoning reports, environmental reports, and land surveying. Respondent Firm is not a
6 registered land-surveying company, and it does not perform land surveys. Sommers is
7 not a registered land surveyor, and he does not perform land surveys.

8 5. It was determined through the investigation that Respondent Firm had
9 engaged an Arizona surveying firm to perform ALTA surveys in Arizona for Respondent
10 Firm's clients (the "Engagement"). At the time of the initial Engagement, Sommers
11 verified that the Arizona firm was registered in Arizona as a land surveying firm, and that
12 its principal was registered as a surveyor in Arizona.

13 6. The ALTA surveys that were completed in Arizona for Respondent Firm
14 included the name of the Arizona surveying firm, the name of the Arizona surveyor, and
15 the Arizona surveyor's seal.

16 7. Respondent Firm's business name included the word "surveys."
17 Respondent Firm's business name and phone number were also included on the title block
18 of the survey documents, as well as a message that any questions regarding the survey
19 should be addressed to Respondent Firm. These facts led to the charge that Respondent
20 Firm practiced, offered to practice, or held itself out as qualified to practice land
21 surveying.

22 8. Respondent Firm and Sommers deny having the intent to create a
23 perception that Respondent Firm is responsible for performing surveys. Respondent Firm
24 and Sommers were unaware that the above actions could be an issue under Arizona law.

25 III. CONCLUSIONS OF LAW

26 1. The conduct alleged in the Findings of Fact constitutes grounds for
27 discipline against Respondent Firm pursuant to A.R.S. § 32-145(1), in that maintaining
28 Respondent Firm's name and information in the title block of surveys could be interpreted

1 by the public that Respondent Firm practiced, offered to practice, or, by implication, held
2 itself out as qualified to practice a Board-regulated profession without registration.

3 2. The investigation shows, however, that the conduct alleged in the Findings
4 of Fact does not constitute grounds for discipline against Sommers because Sommers
5 never practiced surveying, offered to practice surveying, or advertised himself as a
6 qualified surveyor.

7 ORDER

8 Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues
9 the following Order:

10 1. DISMISSAL OF SOMMERS. Based on the conclusions of law, any
11 disciplinary action against Sommers is dismissed.

12 2. ADMINISTRATIVE PENALTY. Respondent Firm shall pay a civil
13 penalty in the total amount of \$500.00, to be paid no later than November 19, 2019, by
14 certified check or money order made payable to the State of Arizona Board of Technical
15 Registration.

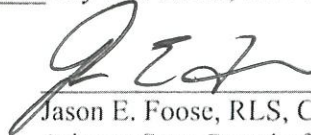
16 3. COST OF INVESTIGATION. Respondent Firm shall pay the cost of
17 investigation, in an amount to be determined, but not to exceed \$300.00, to be paid no
18 later than November 19, 2019, by certified check or money order made payable to the
19 State of Arizona Board of Technical Registration.

20 4. OBEY ALL LAWS. Respondent Firm shall obey all federal, state, and
21 local laws, as well as all rules governing the practice of land surveying in the State of
22 Arizona. As part of this obligation, Respondent Firm agrees to change its business name
23 on all electronic or documentary public materials to "NexusCRE" or some other name
24 that does not include the word "survey" in the name. Secondly, Respondent Firm will put
25 a disclaimer on any Arizona-specific publications or survey documents, as follows:
26 "NexusCRE is not a registered land-surveying firm and does not perform land surveys.
27 All surveys are conducted by qualified contractors who are registered surveyors in
28 Arizona."

1 The Board shall consider any violation of this paragraph to be a separate violation
2 of the rules and statutes governing the Board.

3 5. EFFECTIVE DATE. The effective date of this Consent Agreement is the
4 date it was last executed by the Respondent Firm or the Board.

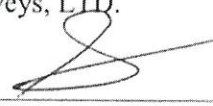
5 ACCEPTED and ORDERED this 22nd day of October, 2019.

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8 Jason E. Foose, RLS, Chairman
9 Arizona State Board of
10 Technical Registration

11 Consent Agreement and Order, Number P17-043 accepted this 17th day of
12 October, 2019.

13 CreSurveys, LTD.

14 By: 
15 Wendell Sommers
16 President

17 MAILED VIA CERTIFIED MAIL:
18 No. 9214 8901 9434 4600 0627 78
19 OCTOBER 23, 2019

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21 ORIGINAL FILED:
22 OCTOBER 23, 2019

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