

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE ARIZONA STATE  
BOARD OF TECHNICAL REGISTRATION**

**In the Matter of:**

**Victor Fontes  
Non-Registrant**

**Respondent**

}  
}  
}

**Case No.: P17-075**

**CONSENT AGREEMENT  
and  
ORDER OF DISCIPLINE**

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration (“Board”) and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 et seq., and A.A.C. R4-30-120(G), the undersigned party, Victor Fontes, Non-Registrant, (“Respondent”) 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.

**RECITALS**

1. Respondent 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.
2. Respondent understands that he has a right to a public administrative hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action concerning the matters set forth herein.
3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.
4. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against him.

1           5.    The Consent Agreement, any record prepared in this matter, all investigative  
2 materials prepared or received by the Board and all related exhibits and materials, are  
3 public records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this  
4 Consent Agreement and may be retained in the Board's files pertaining to this matter.

5           6.    Respondent understands this Consent Agreement deals with Board case  
6 number P17-075 involving allegations that Respondent engaged in conduct that would  
7 subject him to discipline under the Board's statutes and rules. The investigation into  
8 these allegations against Respondent shall be concluded upon the Board's adoption of  
9 this Consent Agreement.

10          7.    Respondent understands that this Consent Agreement does not constitute a  
11 dismissal or resolution of any other matters currently pending before the Board, if any,  
12 and does not constitute any waiver, express or implied, of the Board's statutory authority  
13 or jurisdiction regarding any other pending or future investigation, action or proceeding.

14          8.    Respondent also understands that acceptance of this Consent Agreement does  
15 not preclude any other agency, subdivision, or officer of this State from instituting any  
16 other civil or criminal proceedings with respect to the conduct that is the subject of this  
17 Consent Agreement.

18          9.    Respondent acknowledges and agrees that, upon signing this Consent  
19 Agreement and returning this document to the Board's Executive Director, he may not  
20 revoke his acceptance of the Consent Agreement or make any modifications to the  
21 document regardless of whether the Consent Agreement has been signed on behalf of the  
22 Board. Any modification to this original document is ineffective and void unless  
23 mutually agreed by the parties in writing.

24          10. This Consent Agreement is subject to the approval of the Board and is  
25 effective only when accepted by the Board and signed on behalf of the Board. If the  
26 Board does not accept this Consent Agreement, the Board retains its authority to hold a  
27 formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the  
28 Board does not approve this Consent Agreement, it is withdrawn and shall be of no

1 evidentiary value and shall not be relied upon nor introduced in any action by any party,  
2 except that the parties agree that should the Board reject this Consent Agreement and this  
3 case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced  
4 by its review and discussion of this document or any records relating thereto.

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

8 12. Respondent understands that any violation of this Consent Agreement may  
9 result in disciplinary action, including suspension or revocation of the registration under  
10 A.R.S. § 32-150.

11 13. Respondent agrees that the Board will adopt the following Findings of Fact,  
12 Conclusions of Law and Order.

13 **FINDINGS OF FACT**

14 1. The Board is the duly constituted authority for the regulation and control of  
15 the practice of Professional Land Surveying in the State of Arizona.

16 2. Respondent is not registered with the Board as Professional Land Surveyor.

17 3. Respondent is the owner of Nogales Engineering Co., LLC. The firm  
18 registration was expired July 24, 2016. Subsequently, the firm registration was renewed  
19 on April 20, 2017.

20 4. In or around October 2013, Respondent performed a survey for a property  
21 located at 16390 S. Sycamore Ridge Trail, Vail, AZ.

22 5. In or around January 2017, while the Firm registration was expired,  
23 Respondent returned to the aforementioned property at the request of the new property  
24 owners to provide a survey, in which pins and tags would be set at the NE, NW and SW  
25 property lines.

26 6. On or about January 28, 2017, Respondent sent a work order bill, which  
27 displayed Respondent firm's name, to Kevin Shafer for \$1,100.00, referencing survey  
28 work to establish the Northern property line with on line markers and to set N.E. pin and

1 tag.

2 7. Respondent stated in an interview that Respondent returned to the property in  
3 or around February 2017.

4 8. On or about February 22, 2017, Respondent sent a second notice, which  
5 displayed Respondent firm's name, for work order for \$900, referencing survey work to  
6 establish the Northern property line with on line markers and to set N.E. pin and tag. The  
7 document contained a statement that a mechanics lien will be filed with third notice.

8 9. On or about February 27, 2017, the Board received a complaint alleging that  
9 Respondent represented himself as a Registered Land Surveyor and verbally contracted  
10 with a client to conduct a boundary survey and provide a survey drawing of the client's  
11 lot.

12 10. On October 27, 2017, an Enforcement Advisory Committee convened to  
13 review the complaint against the Respondent. During the meeting, the Committee found  
14 Respondent did perform surveying based on Respondent's actions, the verbal agreement  
15 between Respondent and the allegers, the two billings sent to the allegers, and that  
16 Respondent did a site visit with instrumentation. During the meeting Respondent  
17 admitted that he went to the property with instrumentation and set a pin as a reference  
18 marker.

19 **CONCLUSIONS OF LAW**

20 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq,  
21 including A.R.S. § 32-106.02(A).

22 2. The conduct alleged in the Findings of Fact, constitutes grounds for  
23 discipline pursuant to A.R.S. § 32-121 and A.R.S. § 32-145(1), in that Respondent  
24 engaged in the practice of Land Surveying without Board Registration.

25 **ORDER**

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

28 1. ASSURANCE OF DISCONTINUANCE. Respondent shall not practice,

1 offer to practice, or by any implication hold itself out as qualified to practice Land  
2 Surveying as defined by A.R.S. § 32-101(20) until the Respondent is registered by the  
3 Board and is in full compliance with the Board's Statutes and Rules.

4 2. CIVIL PENALTY. Within Six (6) months from the effective date of this  
5 Consent Agreement, Respondent shall pay a civil penalty of One Thousand Dollars  
6 (\$1,000.00). Payments of One Hundred Sixty-Seven Dollars (\$167.00) for five (5)  
7 months and One Hundred Sixty-Five Dollars (\$165.00) for the sixth and final month are  
8 to be submitted to the Board by cashier's check or money order made payable to the  
9 Arizona State Board of Technical Registration, according to the provisions of A.R.S. §  
10 32-106.02(A).

11 3. COST OF INVESTIGATION. Within Ninety (90) days from the effective  
12 date of this Consent Agreement, Respondent shall pay the cost of investigation of this  
13 case to the Board in the amount of Five Hundred Thirty-Four Dollars (\$534.00) by  
14 certified check or money order made payable to the State of Arizona Board of Technical  
15 Registration, according to the provisions of A.R.S. § 32-128(H).

16 4. EFFECTIVE DATE. The effective date of this Consent Agreement is the  
17 date the Respondent and Board sign the Consent Agreement. If the dates are different, the  
18 effective date is the later of the two dates.

19 5. COSTS OF COMPLIANCE. Respondent shall pay all costs associated with  
20 complying with this Consent Agreement.

21 6. NONCOMPLIANCE. If Respondent violates this Order in any way or fails  
22 to fulfill the requirements of this Order, the Board may seek a Petition for Injunction in  
23 accordance with the provisions set forth in A.R.S. § 32-106.01.

24 ACCEPTED and ORDERED this 27 day of February, 2018.

25  
26   
27 \_\_\_\_\_  
Alejandro Angel, P.E., Chairman  
Arizona State Board of  
28 Technical Registration

1 Consent Agreement and Order, No. P17-075 accepted this \_\_\_ day of  
2 \_\_\_\_\_, 2017. February 12, 2018

3   
4 Victor Fontes, Respondent

5 ORIGINAL filed this 1 day of  
6 MARCH, 2018, with:

7 Arizona State Board of Technical Registration  
8 1110 W. Washington, Suite 240  
9 Phoenix, AZ 85007

9 COPY of the foregoing mailed via Certified Mail  
10 No. 9214 8901 9434 4600 0319 27 and

11 First Class mail this 1 day of MARCH, 2018, to:

12 Victor Fontes  
13 Nogales Engineering Company  
14 537 Camino Agosto  
15 Rio Rico, AZ 85648

16 By: 