

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and Small Arrow Engineering, LLC (CONSULTANT) for the following reasons:

1. OWNER intends to construct Public CNG Fueling Station Storage/Compressor Upgrades and Time Fill Expansion for Transit Vehicle Fueling at the Fleet Management Facility (the Project); and,
2. OWNER requires certain professional survey, design, analysis and engineering services in connection with the Project (the Services); and,
3. CONSULTANT is prepared to provide the Services.

In consideration of the promises contained in this Agreement, OWNER and CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be __th day of _____, 2019.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oklahoma.

ARTICLE 3 - SCOPE OF SERVICES

CONSULTANT shall provide the Services described in Attachment A, Scope of Services.

ARTICLE 4 - SCHEDULE

CONSULTANT shall exercise its reasonable efforts to perform the Services described in Attachment A according to the Schedule set forth in Attachment B.

ARTICLE 5 - COMPENSATION

OWNER shall pay CONSULTANT in accordance with Attachment C, Compensation.

Invoices shall be due and payable upon receipt. OWNER shall give prompt written notice of any disputed amount and shall pay the remaining amount.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

OWNER shall be responsible for all matters described in Attachment D, OWNER'S Responsibilities. OWNER hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by OWNER to CONSULTANT. If OWNER does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to CONSULTANT, OWNER shall obtain a license or right to use, including the right to sublicense to CONSULTANT. OWNER hereby grants CONSULTANT the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the Services. OWNER represents that CONSULTANT'S use of such documents will not infringe upon any third parties' rights.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.

ARTICLE 8 - INDEMNIFICATION AND LIABILITY

Indemnification. The CONSULTANT and the OWNER each hereby agree to defend, indemnify, and hold harmless the other party, its officers, servants, and employees, from and against any and all liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees) caused by an error, omission, or negligent act of the indemnifying party in the performance of services under this Agreement. The CONSULTANT and the OWNER each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims. In any and all claims asserted by any employee of the CONSULTANT against any indemnified party, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT or any of the CONSULTANT'S employees under workers' compensation acts, disability benefit acts, or other employee benefit acts. The acceptance by OWNER or its representatives of any certification of insurance providing for coverage other than as required in this Agreement to be furnished by the CONSULTANT shall in no event be deemed a waiver of any of the provisions of this indemnity provision. None of the foregoing provisions shall deprive the OWNER of any action, right, or remedy otherwise available to the OWNER at common law.

Survival. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance:

- (a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- (b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- (d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

CONSULTANT shall, upon written request, furnish OWNER certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to OWNER. OWNER shall require all Project contractors to include OWNER, CONSULTANT, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insured on their General and Automobile Liability insurance policies, and to indemnify both OWNER and CONSULTANT, each to the same extent.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to CONSULTANT, to fulfill contractual responsibilities to OWNER or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to CONSULTANT in Attachment A, Scope of Services. In the event the OWNER requests CONSULTANT to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to CONSULTANT for review at least 15 days prior to the requested date of execution. CONSULTANT shall not be required to execute any certificates or documents that in any way would, in CONSULTANT's sole judgment, (a) increase CONSULTANT'S legal or contractual obligations or risks; (b) require knowledge, services or responsibilities beyond the scope of this Agreement; or (c) result in CONSULTANT having to certify, guarantee or warrant the existence of conditions whose existence CONSULTANT cannot ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because CONSULTANT has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, CONSULTANT's opinion of probable costs and of Project schedules shall be made on the basis of experience and qualifications as a practitioner of its profession. CONSULTANT does not guarantee that proposals, bids, or actual Project costs will not vary from CONSULTANT'S cost estimates or that actual schedules will not vary from CONSULTANT'S projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by CONSULTANT as deliverables pursuant to the Scope of Services are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by OWNER or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONSULTANT. OWNER shall indemnify and hold harmless CONSULTANT and its subconsultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle CONSULTANT to additional compensation at rates to be agreed upon by OWNER and CONSULTANT.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by CONSULTANT and furnished to OWNER as part of the Services shall become the property of OWNER; provided, however, that CONSULTANT shall have the unrestricted right to their use. CONSULTANT shall retain its copyright and Ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of CONSULTANT.

ARTICLE 14 - TERMINATION AND SUSPENSION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. OWNER may terminate or suspend performance of this Agreement for OWNER'S convenience upon written notice to CONSULTANT. CONSULTANT shall terminate or suspend performance of the Services on a schedule acceptable to OWNER, and OWNER shall pay CONSULTANT for all the Services performed. Upon restart of suspended Services, an equitable adjustment shall be made to CONSULTANT'S compensation and the Project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither OWNER nor CONSULTANT shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either OWNER or CONSULTANT under this Agreement. CONSULTANT shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

ARTICLE 16 - NOTICES

Any notice required by this Agreement shall be made in writing to the address specified below:
OWNER:

Mike White
Fleet Management Supt.
City of Norman
1301 Da Vinci
Norman, OK 73071

CONSULTANT:

John H. Bolte, PE
Principal
Small Arrow Engineering, LLC
216 S. Main Street
Joplin, MO 64801

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of OWNER and CONSULTANT.

ARTICLE 17 - DISPUTES

In the event of a dispute between OWNER and CONSULTANT arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation. Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; provided, however, in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations. CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is CONSULTANT'S policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. CONSULTANT further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

ARTICLE 19 - WAIVER

A waiver by either OWNER or CONSULTANT of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 21 - INTEGRATION

This Agreement, including Attachments A, B, C, and D incorporated by this reference, represents the entire and integrated agreement between OWNER and CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

OWNER and CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

ARTICLE 23 - ASSIGNMENT

Neither OWNER nor CONSULTANT shall assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, CONSULTANT may assign its rights to payment without OWNER'S consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent CONSULTANT from engaging independent CONSULTANTS, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 24 - NO THIRD PARTY RIGHTS

The Services provided for in this Agreement are for the sole use and benefit of OWNER and CONSULTANT. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OWNER and CONSULTANT.

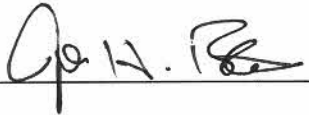
IN WITNESS WHEREOF, OWNER and Small Arrow Engineering, LLC have executed this Agreement.

DATED this ____th day of _____, 2019.

The City of Norman
(OWNER)

Small Arrow Engineering, LLC
(CONSULTANT)

Signature _____

Signature 

Name _____

Name John H. Bolte, P.E.

Title _____

Title Principal/Managing Member

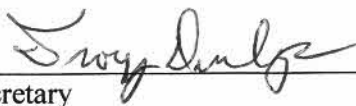
Date _____

Date September 6, 2019

Attest:

Attest:

City Clerk


Secretary

Approved as to form and legality this ____ day of _____ 20__.

City Attorney

**AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES
SAE PROJECT NO 19929
SCOPE OF SERVICES
ATTACHMENT A**

- A. SCOPE OF SERVICES.** The services to be performed by the ENGINEER Small Arrow Engineering, LLC, under this AGREEMENT will consist of the project described below. Further, it is understood and agreed that the date of beginning, rate of progress, and the time of completion of the work to be done hereunder are essential provisions of this AGREEMENT (See Attachment 2 – PROJECT Schedule); and it is further understood and agreed that the work embraced in this AGREEMENT shall commence upon execution of this AGREEMENT and receipt of Notice-to-Proceed. It is further understood that the PROJECT will be designed and constructed in accordance with applicable City of Norman design criteria and specifications for construction.

The Basic Services of ENGINEER include, but are not necessarily limited to, the following tasks:

- Utilizing professional knowledge and experience, identify, consider and evaluate the relevant field data required to perform its SERVICES under this Agreement.
- The scope of services includes miscellaneous industrial design and inspection services as needed at City of Norman facilities. The miscellaneous design and inspection services will be for items proposed by the ENGINEER and approved by the CITY for any items listed in this Attachment A.
- Designate a representative to coordinate all information between ENGINEER and CITY.
- Perform necessary investigations for the PROJECT.
- Prepare all drawings in conformance with CITY requirements.
- Provide routine progress reports to CITY staff.
- Prepare all drawings in conformance with the drafting standards set forth by CITY staff. Construction Drawings shall be 11" X 17" in size. Record Drawings shall be 22" X 34" in size.
- Provide the CITY with a budget analysis and cost estimates for all components of the PROJECT and verify that such cost estimates are within the estimates set forth in the PROJECT Budget provided by CITY to ENGINEER.

A.1 PHASE 1. DESIGN The Project Design phase shall include:

- A.1.1** Attend initial design workshop with CITY officials and other stakeholders to review general requirements, establish critical design parameters, and discuss scheduling for the project.
- A.1.2** Perform Site Observation and review of existing systems. Utilize existing Topographic and Boundary Survey, and Geotechnical Investigation for Equipment Pad design.
- A.1.3** Evaluate Equipment and make recommendations for installation.
 - A.1.3.1** Evaluate existing CNG compressor(s)
 - A.1.3.2** Evaluate Upgraded Compressor Control System(s)
 - A.1.3.3** Evaluate Storage Options
 - A.1.3.4** Evaluate Priority Panel System
 - A.1.3.5** Perform CNG Station Modeling/Simulations for Expansion of Time Fill Yard to fuel Transit Vehicles
- A.1.4** Coordination with CITY personnel as to methods of arranging construction work so that a Sequence of Construction can be developed for the contractor.
- A.1.5** Engineer will submit the preliminary plans to the City for review along with a preliminary estimate of construction costs.
- A.1.6** Furnish three (3) copies of the design, construction plans, specifications, and other documents listed in this Section A.1 to the CITY.
- A.1.7** Representatives of the project team, including the project manager, will be present during the construction documents review meeting and field review with the CITY. Prepare minutes of the meeting and disseminate to all attendees.
- A.1.8** Incorporate CITY comments, additions, deletions, and/or corrections to the plans and specifications.
- A.1.9** Furnish final construction drawings, and final contract documents with bidding proposal to the CITY for final approval and signatures.
- A.1.10** Prepare final estimate for cost of construction.
- A.1.11** Furnish construction drawings and contract documents as required during bidding cycles (via contractor deposits).
- A.1.12** ENGINEER shall furnish three (3) ½ -size plan sets and two (2) full size plan sets that contain all addendum changes in paper and 1 electronic copy to the CITY.

A.2 PHASE 2. BIDDING PHASE

- A.2.1** CITY will disburse construction documents to prospective bidders via contractor deposits.
- A.2.2** Answer questions from prospective bidders and issue interpretations and clarifications in writing to CITY.
- A.2.3** Prepare necessary addenda for distribution to all plan holders by the CITY.
- A.2.4** Attend pre-bid conference with CITY staff and prospective bidders to present project requirements and answer project related questions.
- A.2.5** Attend bid opening. Prepare a tabulation of the bid proposals received and a recommendation for award of the construction contract.

A.3 PHASE 3. SERVICES DURING CONSTRUCTION

- A.3.1** Attend pre-construction conference.
- A.3.2** Engineering surveys for horizontal and vertical controls will be established by the CONTRACTOR. Any necessary adjustments or re-establishment of controls will be by CONTRACTOR.
- A.3.3** Respond to requests for information.
- A.3.4** Respond to requests for clarifications.
- A.3.5** Review and approve, or take other appropriate action on detailed drawings, shop drawings, and material information submitted by the contractor. Such checking shall be only for conformance with the design concept of the Project and compliance with the information given in the contract documents.
- A.3.6** ENGINEER will perform periodic review of construction to observe the work for general conformance with the plans and specifications.
- A.3.7** Attend project progress meetings.
- A.3.8** ENGINEER will prepare and submit change orders and time extensions to the CITY for approval together with the reason for the change order and a recommendation. This shall include detailed backup information and any necessary drawings to resolve actual field conditions encountered.
- A.3.9** Attend final inspection. ENGINEER will prepare a detailed listing of items requiring further attention by the contractor in order to comply with project requirements, prior to making recommendation for final payment.
- A.3.10** Prepare for the CITY a set of drawings suitable for scanning or microfilming showing those changes made during the construction process based on marked-up prints, drawings and other data furnished by the Contractor to ENGINEER, such information being required of the Contractor in the construction Contract Documents. "Record" drawings shall be submitted in the full size/half size form and on a flash drive in digital format.

END OF SCOPE OF SERVICES

City of Norman Public CNG Fueling Station Upgrades and Transit Time Fill Design
Attachment B - Project Schedule

Tasks	2019-2020											
	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY			
Notice to Proceed	X											
City Plan Reviews		X	X	X								
Data Collection/Topo Survey	X											
Evaluate Existing CNG Compressors/Controls	X											
Evaluate Storage Systems	X											
System Modeling/Simulation	X											
Submit Evaluations & Recommendations		X										
Preliminary Plans/Cost Estimate		X	X									
Mechanical Systems Design		X										
Control Systems Design		X										
Construction Plans/Specs/Cost Estimate		X	X									
QA/QC Review			X									
Prepare Equipment Bid Documents			X									
Plotting & Printing Equipment Package			X									
Bidding Process for Equipment Package			X									
Award Bid & Order Equipment under PO			X	X	X	X	X	X	X	X	X	X
Periodic Construction Phase Services				X	X	X	X	X	X	X	X	X
Final Inspection / Station Integration												
Prepare Record Drawings												
Project Closeout												

Note: This anticipated project schedule is based upon current lead times on equipment orders.

**ATTACHMENT C - SMALL ARROW ENGINEERING FEE SCHEDULE - SAE PROJECT NO 19929
CNG PUBLIC FUELING STATION AND TIME FILL UPGRADES - SEPTEMBER 2019
NORMAN, OKLAHOMA**

		Principal	Project Engineer	Senior Designer	CAD Technician	Total Hours	Total Fees
		\$ 165.00	\$ 115.00	\$ 120.00	\$ 65.00		
DESIGN PHASE							
Develop Conceptual Equipment Plan		2	4	4		10	\$ 1,270.00
Compressor Evaluation		2	0	2		4	\$ 570.00
System Modeling/Simulation		2		4		6	\$ 810.00
Storage / Controls Evaluation		2	0	2		4	\$ 570.00
Project Meetings/Site Visits	2 Trips	16		0		16	\$ 2,640.00
Prepare Equipment Cost Estimates		4		4		8	\$ 1,140.00
Prelim. Equip. Plans/Plan Reviews		4	4	8	16	32	\$ 3,120.00
Construction PS&E		8	8	16	24	56	\$ 5,720.00
SUB-TOTALS		40	16	40	40	136	\$ 15,840.00
BIDDING PHASE							
Project Meetings/Site Visits	1 Trip	8				8	\$ 1,320.00
Bidding Phase/Pre-bid		4	4			8	\$ 1,120.00
Bid Tabulation/Recommendation		4	4	4		12	\$ 1,600.00
SUB-TOTALS		16	8	4	0	28	\$ 4,040.00
CONSTRUCTION PHASE							
Project Meetings/Site Visits	2 Trips	16				16	\$ 2,640.00
Const. Phase Support		4	8	8		20	\$ 2,540.00
Prepare Record Drawings		4	0	8	20	32	\$ 2,920.00
SUB-TOTALS		24	8	16	20	68	\$ 8,100.00
GRANT ADMINISTRATION							
		0				0	\$ -
		0				0	\$ -
SUB-TOTALS		0	0	0	0	0	\$ -
Total Project Hours		80	32	60	60	232	
Other Expenses							
Topographic Survey and Base Map (MJ Surveying, LLC)							\$ 3,200.00
Travel/Mileage	(500mi @ \$0.58 x 5 trips)						\$ 1,450.00
Lodging/Meals							\$ 800.00
SUB-TOTAL							\$ 5,450.00

TOTAL OF ALL ANTICIPATED FEES (N.T.E.)

= \$ 33,430.00

AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES
SAE PROJECT NO 19929
OWNER'S RESPONSIBILITIES
ATTACHMENT D

D. RESPONSIBILITIES OF THE CITY. The CITY agrees:

- D.1 Reports, Records, etc. To furnish, as required by the work, and not at expense to the ENGINEER:
 - D.1.1 Records, reports, studies, plans, drawings, and other data available in the files of the CITY which may be useful in the PROJECT.
 - D.1.2 Standard drawings and standard specifications.
 - D.1.3 CNG Station Equipment Manuals.
- D.2 Access. To provide access to public and private property when required in performance of ENGINEER'S services. To coordinate progress meetings with the Project Architect for the Transit Maintenance Facility.
- D.3 Staff Assistance. To furnish the services of at least one of CITY'S employees or staff who has right of entry to, and who has knowledge of, CITY'S facilities relating to this PROJECT.
 - D.3.1 To furnish legal assistance as required in the preparation, review and approval of construction documents.
 - D.3.2 To furnish staff assistance in locating existing utilities and in expediting their relocation.
- D.4 Review. To Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by ENGINEER and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- D.5 Record Drawings. Provide to the ENGINEER the construction information required to prepare record drawings at the conclusion of construction.