

DEVELOPER PARTICIPATION AGREEMENT

This agreement (the “Agreement”) is entered into effective June __, 2021 (the “Effective Date”) by and between the City of San Marcos, a Texas municipal corporation (the “City”), and SML Owner I, LLC a Delaware limited liability company (the “Developer”).

I. RECITALS

1.1 Section 212.071 of the Texas Local Government Code authorizes the City to participate with a developer of a subdivision or land in the cost to construct public improvements.

1.2 The Developer is developing a tract of land known as San Marcos Lofts Phase 1 and 2 in San Marcos, Hays County, Texas with two mid-rise buildings and parking garage located at 141 W. Hopkins (Permit number: 2019-28322) and 205 W. San Antonio St. (Permit number: 2019-28324; each a “Building”, and collectively the “Development”). The Developer is obligated under applicable ordinances to construct and dedicate certain public improvements necessary to support the Development pursuant to the Public Improvement Construction Plans (the “PICP Plans”) for San Marcos Lofts 1 and 2, Permit No. 2019-28248 (the “PICP Work”) dated as of June 25, 2019.

1.3 The City’s engineers, on May 17, 2021, determined that there is a public need to install a new water line (the “New Water Line”) in the area of the Developer’s ongoing PICP Work. The City wishes to install the New Water Line before the Developer completes the PICP Work and paves the surface of the area above the New Water Line to avoid future damage to public surface improvements dedicated to the City by Developer that would result if the City installed the New Water Line after such other public improvements were completed. Installing the New Water Line while the PICP Work is being completed is also more cost effective as Owner’s Contractors (defined below) are already mobilized. Therefore, the City wishes to contract with the Developer to provide for the construction and allocation of costs for the New Water Line. The PICP Work and the New Water Line are, collectively, the “Improvements.”

II. AGREEMENT

In consideration of the mutual benefits to and obligations of the parties under this Agreement, the parties agree to the following terms and conditions:

2.1 Design and Construction of Improvements

2.1.1 Construction. The Developer has contracted with Alshab Construction Group (“ACG”) as its general contractor and AVB Construction (“AVB”) as its construction manager (collectively, the “Owner’s Contractors”) to complete the construction of the Improvements in accordance with the PICP Plans. The City has approved the scope of work prepared by ACG’s subcontractor, Allied Underground (“Allied”), dated as of May 24, 2021 (attached as Exhibit A) to construct the New Water Line, and the City will inspect the installation of the New Water Line as construction

proceeds to ensure compliance with the City's applicable ordinances, standards and processes.

2.1.2 Project Manager. The Developer, thru the Owner's Contractors will act as project manager in the construction of the Improvements. The Developer will ensure that the construction is carried out under the direct supervision of a professional engineer registered in the State of Texas.

2.1.3 Independent Contractor. The Developer shall be solely responsible for selecting, supervising and paying the construction contractor(s) or subcontractors and for complying with all applicable laws, including but not limited to all requirements concerning workers compensation and construction retainage. Developer has selected Owner's Contractors and Allied (subcontractor) to construct the Improvements. The parties agree and understand that all contractors, employees, volunteers and personnel furnished or used by the Developer in the installation of the Improvements shall be the responsibility of the Developer and shall not be deemed employees or agents of City for any purpose.

2.1.4 Maintenance Bond. Developer or General Contractors, at Developer's election, ("Contractor") will execute a one-year maintenance bond in an amount equal to 20% of the construction costs of the Improvements (the form and substance of which is attached as Exhibit B). The bond must be executed by a corporate surety in accordance with the Chapter 2253 of the Texas Government Code.

2.1.5 Warranty. The contract with the contractor will provide for at least a one-year warranty against defects in materials and workmanship. This warranty obligation shall be covered by any performance or payment bonds required of the contractor as specified in 2.1.4.

2.1.6 Completion and Acceptance. The City agrees to inspect the construction of the Improvements as construction progresses, to inspect the Improvements upon completion of construction, and to accept the Improvements upon satisfactory completion, in accordance with the City's inspection and acceptance policies and procedures specified in Exhibit C. The City will issue a certificate of acceptance of the Improvements when: a) the required close-out process is completed; b) the contractor submits a one (1) year warranty against defects in materials and workmanship in the Improvements as provided in 2.1.4; and c) the Contractor submits a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, subcontractors have been released, and that there are no claims pending of which the Contractor has been notified.

2.1.7. Temporary Certificate of Occupancy ("TCO"). In consideration for Developer's agreement to add the New Water Line to the PICP Work at this stage of the construction of the Improvements, the City shall not require the completion of the Improvements as a condition to issuing a TCO for either Building, with the explicit understanding that the work involving the Improvements will be ongoing at the time of the anticipated TCO (in July of 2021). Subject to the foregoing condition, TCO's will be issued for the Buildings pursuant to the City's normal procedures, as identified in the City of San

Marcos Guide to Substantial Completion, Stocking/Staffing/Furniture, TCO and CO, a copy of which is attached hereto as Exhibit D and made a part hereof by this reference.

2.1.8. Developer Covenant. Developer covenants and agrees to use commercial reasonable efforts to diligently work on and complete the Improvements expeditiously, subject to weather delays.

2.2 Cost Participation

2.2.1 Cost Participation Amount. The City shall pay for the New Water Line in a total amount not to exceed of \$200,000.00 as itemized in Exhibit A. The Developer will pay for all other costs for the Improvements.

2.2.2 Limits of Participation. The City's cost participation of \$200,000.00 does not exceed 30 percent of the cost of the Improvements.

2.2.3 Application for Payment. The Developer shall submit a written application for City participation payment after the City's acceptance of the Improvements. The application for payment to the City shall be for the lesser of the amount of the actual costs associated with the City's portion of the Improvements or the City's participation amount as stated in paragraph 2.2.1. The application for payment shall be in a form acceptable to City and must include a breakdown of actual costs of the Improvements with supporting documentation, including all payment receipts and any other documentation reasonably requested by the City to support the City's expenditure of public funds.

2.2.4 City Payment. Subject to all applicable ordinances, standards and processes, the City will pay its participation funds in one payment within 30 days after receipt of a complete (as determined by the City) written application for participation payment from Developer.

2.2.5 Payments to Subcontractors and Suppliers. The Developer shall be solely and exclusively responsible for compensating any of its contractors, employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and insuring that no claims or liens of any type will be filed against any property owned by the City arising out of or incidental to the performance of any service performed pursuant to this Agreement. In the event a statutory lien notice is sent to the City, the Developer shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense or, otherwise, pay all sums due under the lien notice, and hold City harmless from any losses that may result from the filing or enforcement of any said lien notice.

2.3 GOVERNMENTAL IMMUNITY, INDEMNITY AND RELEASE

2.3.1 No Waiver of Immunity. The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing

and performing this Agreement, is a governmental entity acting in a governmental capacity.

2.3.2 *Indemnity and Release.* Until the Improvements are accepted by the City, Developer agrees to and shall indemnify, hold harmless, and defend City and its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, expert fees and attorney's fees, for injury to or death of any person, or for damage to any property, or for breach of contract, arising out of or in connection with the work done by Developer, its officers, employees, agents and contractors, under this Agreement, regardless of whether such injuries, death, damages or breach are caused in whole or in part by the negligence of City, any other party indemnified hereunder, or the Developer.

2.3.3 *Indemnity and Hold Harmless as to Subcontractors.* The Developer shall indemnify and hold the City harmless from any monetary claims of suppliers or subcontractors of Developer for improvements constructed or caused to be constructed by the Developer.

2.3.4 *Indemnity and Hold Harmless as to Others.* The Developer shall indemnify and hold the City harmless from any and all injuries to or claims of adjacent property owners or occupants resulting from or relating to the Developer's performance under this Agreement until the Improvements are accepted by the City.

2.3.5 *Release.* The Developer assumes full responsibility for the work to be performed hereunder until the Improvements are accepted by the City, and releases, relinquishes and discharges the City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character, including the cost of defense therefore, for any injury to or death of any persons and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with, the Developer's work to be performed hereunder. This release shall apply whether or not said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether or not said claims, demands, and causes of action were caused in whole or in part by the negligence of the City, any other party released hereunder, or the Developer.

2.4 Miscellaneous

2.4.1 *Entire Agreement; Amendment; Assignment.* This Agreement constitutes the entire agreement between the parties hereto and may be amended only by a written document signed by the parties. This Agreement shall be binding upon the successors and assigns of the parties. The assignment of all or part of this Agreement by a party is not valid without the written consent of the other party.

2.4.2 *Subject to Ordinances and Laws.* This Agreement and the obligations of the parties hereunder are subject to all valid and applicable ordinances, fees (including City

impact fees and/or pro rata fees), rules, regulations, and laws of all governmental agencies having lawful jurisdiction over them.

2.4.3 Applicable Law and Venue. This Agreement shall be governed and construed under and in accordance with the laws of the State of Texas. Jurisdiction and venue for any matter arising out of this Agreement shall be in Hays County, Texas. Jurisdiction and venue in federal court for matters arising out of this Agreement shall be in the United States District Court for the Western District of Texas, Austin Division.

2.4.4 Severability. If any the provision of this Agreement is held to be invalid or unenforceable by a court of proper jurisdiction, the holding will not affect any other provisions of this Agreement if the Agreement can be given effect without the invalid provision. The Parties will construe the Agreement as if the invalid or unenforceable provision had not been contained in this Agreement.

2.4.5 Books and Records. All of the Developer's books and other records related to the design, bidding and construction of the Improvements shall be available for inspection by the City.

2.4.6 Subject to Approval. This Agreement and the City's payment obligations hereunder are subject to approval of the San Marcos City Council.

EXECUTED to be effective as of the Effective Date first written above.

CITY:

By: _____
Bert Lumbreras, City Manager

DEVELOPER:

SML Owner I, LLC, a Delaware limited liability company

By: SML I Manager, LLC, its manager

Name: 
Jared Schenk

Title: Manager
Manager

EXHIBIT A
CITY APPROVED COST FOR NEW WATER LINE



ALLIED UNDERGROUND INC.

107 N. Grange Street
P.O. Box 1732
Bertram, Texas 78605
Phone 512.355.9094 Fax 512.355.2992

Change Order Request

San Marcos Lofts 1 & 2
141 West Hopkins Street
San Marcos, Texas

May 24, 2021

Description	Quantity	Unit Price	Ext. Price
General Conditions			
Mobilization (Split)	1 ls	\$2,500.00	\$2,500.00
Haul off of Utility Spoils	120 cy	\$22.00	\$2,640.00
			\$5,140.00
Water- Loft 1			
8" C-900 DR-14 PVC	280 lf	\$114.00	\$31,920.00
8" Ductile Iron Pipe	6 lf	\$120.00	\$720.00
6" Ductile Iron Pipe	6 lf	\$113.00	\$678.00
Connect to Existing 8" Water Line	2 ea	\$7,500.00	\$15,000.00
8" Gate Valve	1 ea	\$1,395.00	\$1,395.00
6" Gate Valve	1 ea	\$990.00	\$990.00
8" x 8" Swivel Tee	1 ea	\$1,015.00	\$1,015.00
8" x 6" Swivel Tee	1 ea	\$675.00	\$675.00
8" 45 Bend	4 ea	\$385.00	\$1,540.00
8" Sleeve	3 ea	\$475.00	\$1,425.00
6" Sleeve	1 ea	\$300.00	\$300.00
8" Megalugs	19 ea	\$95.00	\$1,805.00
6" Megalugs	3 ea	\$70.00	\$210.00
6" Bell Joint Restraint on Existing Line	2 ea	\$750.00	\$1,500.00
Reconnect Existing Meter	1 ea	\$2,000.00	\$2,000.00
Reconnect Existing Fire Hydrant	1 ea	\$3,500.00	\$3,500.00
Reconnect Existing Fire Line	1 ea	\$3,500.00	\$3,500.00
Testing	1 ls	\$1,500.00	\$1,500.00
			\$69,673.00

Total Amount for Loft 1 \$74,813.00

General Conditions			
Mobilization (Split)	1 ls	\$2,500.00	\$2,500.00
Haul off of Utility Spoils	126 cy	\$22.00	\$2,772.00
			\$5,272.00
Water- Loft 2			
8" C-900 DR-14 PVC	280 lf	\$114.00	\$31,920.00
2" Service Line	20 lf	\$64.00	\$1,280.00
1" Service Line	20 lf	\$62.00	\$1,240.00
2" Poly for Temp. Water Line	200 lf	\$27.00	\$5,400.00
Connect Temp. Line to Existing Meters	2 ea	\$1,500.00	\$3,000.00
6" x 2" Tap for Temp. Water Line	1 ea	\$2,500.00	\$2,500.00
Connect to Existing 6" Gate Valve	1 ea	\$7,500.00	\$7,500.00
Connect to Existing 6" Line	1 ea	\$7,500.00	\$7,500.00
8" x 2" Tap	1 ea	\$1,500.00	\$1,500.00
8" x 1" Tap	2 ea	\$1,400.00	\$2,800.00
2" Couplings	1 ea	\$225.00	\$225.00
1" Couplings	2 ea	\$200.00	\$400.00
Connect to Existing 2" Meter Services	1 ea	\$2,000.00	\$2,000.00



ALLIED UNDERGROUND INC.

107 N. Grange Street
 P.O. Box 1732
 Bertram, Texas 78605
 Phone 512.355.9094 Fax 512.355.2992

Description	Quantity	Unit Price	Ext. Price
Connect to Existing 1" Meter Services	2 ea	\$1,750.00	\$3,500.00
8" x 6" Swivel Tee	1 ea	\$675.00	\$675.00
8" x 6" Reducer	2 ea	\$280.00	\$560.00
6" Gate Valve	2 ea	\$990.00	\$1,980.00
6" Sleeve	3 ea	\$300.00	\$900.00
8" Megalugs	4 ea	\$95.00	\$380.00
6" Megalugs	11 ea	\$70.00	\$770.00
6" Bell Joint Restraint on Existing Line	2 ea	\$1,750.00	\$3,500.00
Install 6" Gate Valve on Existing 6" Line	1 ea	\$7,500.00	\$7,500.00
Remove 6" pipe and 2" Temp. Line	1 ls	\$2,000.00	\$2,000.00
Testing	1 ls	\$1,500.00	\$1,500.00
			\$90,530.00

Total Amount for Loft 2 \$95,802.00

Total Amount for Loft 1 & 2 \$170,615.00

NOTES:

All traffic control, pavement, concrete repairs in new Fredericksburg St. are excluded. Only flowable will be installed. Fredericksburg St. should be closed for construction. All barricades by others.

No flowable fill will be used. All trenches will be backfilled and compacted with excavated material.

No traffic plates. Area will be fenced off by G.C.

All water samples will be taken by COSM.

EXCLUSIONS:

Permit & Inspection fees (except plumbing permit)

Capital recovery fees

Testing (other than required pressure tests on piping)

Handling, storage or disposal of any contaminated soils.

Adjustment or Relocation of any existing utilities, except as bid.

Bonds

All Traffic Control

Engineered Traffic Control Plan and Approval

Street Cut & ROW Fees

Repair to existing utilities not shown on plans or marked by Texas One Call or Dig Tess.


 Leonard Meredith

5-24-21

Date

Exhibit B-SAMPLE BOND



MAINTENANCE BOND

BOND NO. 800078512

KNOW ALL MEN BY THESE PRESENTS:

That we M.C. Ethridge Co. as Principal, and
Atlantic Specialty Insurance Company as Surety, are held and firmly bound unto City of San Marcos

as Oblige in the sum of Forty Thousand Five Hundred Sixty Eight and 88/100
Dollars (\$40,568.88) for which sum,
we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

WHEREAS, on the 11th day of March, 2020, Principal entered into a contract with the
Obligee for:

Cottonwood Creek Phase 2 Section 2

Which contract is by reference made a part hereof and is hereafter referred to as the Contract.

NOW THEREFORE, the condition of this obligation is such, that if the Contractor shall make good any defect in material
or construction that shall appear within 1 year(s) from the date of the substantial completion,
(August 28, 2021) this shall be null and void and otherwise remain in full force and effect.

Signed, sealed and dated this 28th day of August, 2020.

Witness

Witness

Michael Wade

This can not be
before the City has
accepted the all items
of the close out
packet. Inspector
confirmation of
punch list item has
not be completed.

M.C. Ethridge Co.

BY:

Principal

ITS:

VICE-PRESIDENT

Atlantic Specialty Insurance Company

BY:

Attorney-In-Fact John Schlichte

Exhibit C (Sample Package)



City of San Marcos Environment & Engineering Project Completion Packet

Please follow the steps below to receive your Certificate of Acceptance from the City of San Marcos Environmental and Engineering Department.

- ☐ 1. Project walk-through complete
- ☐ 2. Project punch list items complete (complete attached Punch list, once complete, with corresponding signatures)
- ☐ 3. Complete Certificate of Acceptance (attached)
- ☐ 4. Complete Warranty letter (attached)
- ☐ 5. Attach One-Year Bond for all Public Improvement Construction Projects, as stated in the Land Development Code 1.6.6.6. IF APPLICABLE
- ☐ 6. Deliver record drawings with each sheet bearing a record drawing stamp as well as the engineer's signature (All projects must deliver 2 hard copies and one PDF. Public Improvement Construction Plans must also deliver a CAD set.)
- ☐ 7. Deliver recorded easements with recorded volume number and page number.
- ☐ 8. All required letter of compliance with design. Such as but not limited too regional detention pond and water quality facilities.

Items #2 - #8 shall be submitted as one submittal to the City of San Marcos Environment and Engineering Department. Upon review, the Certificate of Acceptance will be executed and a copy will be delivered to the Owner. Utilities will not be activated until Certificate of Acceptances has been issued by the City of San Marcos.

GENERAL PUNCH LIST ITEMS

PROJECT NAME: San Marcos Lofts 1 & 2

PERMIT NUMBER: Permit No. 2019-28248

Owner: SML Owner 1, LLC

Contact Person: Jared Schenk

Date _____

Please check or indicate Not Applicable

	1	Texas Handicap Accessibilities Act Letter of Acceptance for applicable ramps and sidewalks
	2	Silt Fence removed after acceptable vegetation has taken
	3	Revegetate all affected areas
	4	Stripe and mark according to plans
	5	Post all new signs and reset all applicable signs
	6	Test all applicable wastewater system components (Copies of test on file)
	7	Line all manholes
	8	Test all applicable water system components (Copies of test on file)
	9	Correct gate valve riser in place
	10	All water meters boxes installed per detail
	11	All Fire Hydrants installed per detail
	12	All storm drain cleaned, no standing water
	13	Remove all construction equipment
	14	Remove all construction debris
	15	Walk through with COSM Water/Wastewater dept representative - all meters and manholes inspected and tested, all backflow prevention inspected and tested, all valves turned and accepted, new public infrastructure GPS'd - accepted by print name: _____ signature: _____ date: _____
	16	City notified that hydrant meter is no longer needed.

Comments

CITY OF SAN MARCOS
DEPARTMENT OF ENVIRONMENT
AND ENGINEERING
CERTIFICATE OF ACCEPTANCE

Developer/Owner shall complete all areas with *.

***PROJECT NAME:**

San Marcos Lofts 1 & 2

141 WEST HOPKINS ST & 205-213 WEST SAN ANTONIO ST

SAN MARCOS, TEXAS 78666

(Address)

***DEVELOPER/OWNER:**

SML OWNER 1, LLC

JARED SCHEINK, REPRESENTATIVE 1933 W. WELLINGTON

CHICAGO, ILLINOIS 60657

312-543-7983

(Address)

(Email Address, if preferred method of communication)

***PERMIT NUMBER:**

PERMIT NO. 2019-28248

***ENGINEER:**

RAMSEY ENGINEERING, LLC.

3206 YELLOW PINE TERRACE

AUSTIN, TEXAS 78757 512-650-6800

(Address)

***CONTRACTOR:**

ACG

(Address)

ACCEPTANCE DATE (to be filled in by City):

****The City of San Marcos has performed final inspection on the above project for the following improvement(s) - give brief description:***

As-Built's are attached

(to be filled out by City)

As-built's must be received in PDF, CAD, and 2 hard copies.

(Site Preparation projects do not require CAD drawings.)

A one-year guarantee for the material and workmanship is attached.

A Bond for 20% of all cost in ROW or Easements for this project has been posted by the owner and a copy of this one year bond is attached, as stated in the Land Development Code Section 1.6.6.6. (Site Preparation projects do not require a bond.)

All work has been completed in accordance with the plans, specifications and/or standards for the City of San Marcos.*

Except for items noted below

***Changes to the original plans reviewed by the City of San Marcos are as follows:**

Sheet # _____ Approved Change (attach approval for all changes): _____

The Following items need to be corrected within 90 Days or citations may be issued (to be filled out by City).

Sheet # _____ Corrections: _____

Other _____

Project Inspector _____ Date _____
Department of Engineering

Inspector Manager _____ Date _____
Department of Engineering

Project Manager _____ Date _____
Department of Engineering

Distribution (for City use only):

Y Project File

Y Developer/Owner

_____ Water/Wastewater Department

_____ Legal (if CIP or oversize agreement)

_____ Public Works Department (if involved)

_____ Building Inspection (if detention pond or onsite work)

_____ Planning (if platting involved)

_____ Fire (if fire line/hydrant included)

CITY OF SAN MARCOS
DEPARTMENT OF ENVIRONMENT
AND ENGINEERING
INSTALLATION & WORKMANSHIP GUARANTEE

PROJECT NAME:

San Marcos Lofts 1 & 2

141 WEST HOPKINS ST & 205-213 WEST SAN ANTONIO ST
SAN MARCOS, TEXAS 78666

(Address)

DEVELOPER/OWNER:

SML OWNER 1, LLC

JARED SCHEINK, REPRESENTATIVE 1933 W. WELLINGTON
CHICAGO, ILLINOIS 60657
312-543-7983

(Address)

(Email Address, if preferred method of communication)

PERMIT NUMBER:

PERMIT NO. 2019-28248

ENGINEER:

RAMSEY ENGINEERING, LLC

3206 YELLOW PINE TERRACE

AUSTIN, TEXAS 78757 512-650-6800

(Address)

CONTRACTOR:

ACG

21 East Long Lake Rd / Suite 215 / Bloomfield Hills MI 48304
(O) 248-712-4251

(Address)

I, _____ (or authorized representative of _____

_____), guarantee that all materials furnished, all improvements installed and all workmanship in connection with such improvements are free of defects for a period of one year from acceptance of the improvements by the Director of Environment and Engineering.

Developer/Owner's Signature/ Date

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public, in and for the

State of _____

My Commission expires: _____

NOTE: This form is attached to the Certificate of Acceptance Letter, after the project has been completed.

12/12/2007

EXHIBIT D
**COPY OF CITY OF SAN MARCOS GUIDE TO SUBSTANTIAL COMPLETION,
STOCKING/STAFFING/FURNITURE, TCO AND C OF O**



City of San Marcos
Guide to
Substantial Completion,
Stocking/Staffing/Furniture,
TCO and C of O

This guide is provided to *interested parties* as a courtesy from the City of San Marcos. Each project is considered on a case by case basis and the individual circumstances of the project. Due to these factors, this guide may not be all inclusive and any or all of the requirements listed herein may be required, as well as additional requirements, as mandated by the *Building Official* and/or the *Fire Marshal*. Final authority to grant a *TCO* and *C of O* rest solely with the *Building Official* and *Fire Marshal*.

Signature

Date

Printed Name

Permit Number

Please remove this cover page, sign it and upload it to MPN under your building permit number. No inspections will be allowed to be scheduled until this signed document is uploaded.

Ver. 7/17

This guide outlines the requirements that *interested parties* must meet to obtain permission to occupy a building during the final stages of construction. Please review and contact the *Permit Center* with any additional questions or concerns at 512-805-2630.

Definitions:

Alarm Final (Fire) – To be conducted in conjunction with *Finals*. No monitoring of the system is allowed until inspection has passed.

Building Official (BO) - Chief Building Official or their designee, who is responsible for building inspections.

Certificate of Occupancy (C of O) - Issued upon 100% completion of project (this includes all building and *Fire Marshal* issues being resolved, site work, permits, fees, etc.)

C of O Final (Fire) - To get a *C of O Final (Fire)* inspection it is preferred that the business is open and operating on a *TCO* prior to a *C of O Final (Fire)* inspection request. This will allow the *Fire Marshal* to see normal operations and confirm that egress and fire extinguishers are not blocked. This will also allow the *FM* to collect important emergency contact information for after-hour emergencies. However, we understand this is not always possible and a request for an expedited *C of O Final (Fire)* inspection can be requested via email at fireplan@sanmarcostx.gov. The inspection request must also be put into the *MPN* system prior to sending the email to the *FM*. This will ensure that all requirements have been fulfilled and the *Permit Center* is ready to issue the *C of O* certificate upon completion of the inspection. The *FM* office will not conduct a *C of O Final (Fire)* inspection without the *MPN* request.

Elevator Final (Fire) – Visual inspection and testing of elevator operations in conjunction with the fire alarm. State inspection is required to be completed prior to this inspection being requested from the City.

Finals/Final Inspections-

Building Department- All Building Final Inspections must be requested at the same time through *MPN*.

- Building, Plumbing, Mechanical and Electrical Final Inspections (Sometimes referred to as your final MEP inspections)
- *Site Final* Inspection

Fire Marshal- All Fire Final Inspections must be requested at the same time through *MPN*. Each trade is responsible for requesting their own inspections, as well as being present during the inspection.

- *Alarm Final (Fire)*- Alarm contractor

- *Sprinkler Final (Fire)*– Sprinkler Contractor
- *Temp C of O (Fire)*- Building Contractor
- Misc.- *Elevator Final (Fire)*, *Generator Final*, *Fixed Suppression System Final (Fire)*, *Fire Pump (Fire)*, *FM200 (Fire)*, *Gate Final (Fire)*

Health Department- *Health Final*, as applicable.

Fire Marshal (FM) - Fire Marshal or their designee who is responsible for fire inspections.

Fire Pump (Fire) – Inspection completed with or prior to the *Sprinkler Final (Fire)*.

Fixed Suppression System Final (Fire) – Inspection completed in conjunction with *Alarm Final (Fire)* and includes, but is not limited to, kitchen hoods, paint booths, pre-action and dry agent systems.

Fixtures - racks, non-combustible bins, wall decorations, items secured/attached to the floor or wall (ie. Cabinets, countertops)

FM200 (Fire) - A clean agent system inspection that can be requested in conjunction with or prior to the *Alarm Final (Fire)*.

Food Establishment - an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and as defined by the TFER.

Furniture - any items not permanently attached to the structure (i.e. Computers, beds, sofas, chairs, tables, desks), combustible bins (i.e. Cardboard or plastic).

Gate Final (Fire) - Inspection completed prior to *C of O Final (Fire)* inspection. If not completed at time of *Temp C of O (Fire)* inspection, **gates/first responder access are required to remain unlocked and open at all times.**

Generator Final - *Fire Marshal* will conduct a generator final only if life safety system is being provided back up power by the generator.

Health Department (Health) – Registered Sanitarian or their designee who is responsible for Health Inspections.

Health Final – Performed upon 100% installation and completion of all *Food Establishment physical facility* requirements. Final inspection to receive *Health Operational Permit* and confirmation of grease trap. Contact *Health* at 512.393.8440 to schedule.

Health Operation Permit –Permit issued by *Health* that authorizes a person to operate a *food establishment*.

Health TCO –Not an occupancy permit or *Health Operation Permit*. Performed to see if the *physical facility* is capable of holding packaged or containerized bulk food that is not *potentially hazardous (PHF)*. Contact *Health* at 512.393.8440 to schedule.

Interested parties - All persons with a vested interest in the project to include, but not limited to, the Contractor, Superintendent, Sub-Contractors, Project Manager, Owner, Stakeholders, Architects and Engineers.

MyPermitNow (MPN) - The City of San Marcos' permitting software. www.mypermitnow.org

Multi-Family- A building classified as Residential "R" with 3 or more living units. To include but not limited to Apartments, Congregate living, Townhomes, Condos etc.

Occupiable Building- Applicable to Multi-Family projects. A building with a classification of Residential "R" as outlined by the adopted International Building Code. This does not include the Clubhouse or Leasing office.

Permit Center – Located at 630 E Hopkins in the Municipal Building on the 2nd floor. The Permit Center can assist with all questions or concerns related to permits. 512.805.2630

Physical facilities (Health) - The structure and interior surfaces of a *food establishment* including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

Potentially hazardous food - Potentially hazardous food (PHF) means a food that requires time and temperature control for safety (TCS) to limit pathogen growth or toxin production.

Site Final – A site final inspection must be completed to provide a punch list of outstanding items prior to *TCO*. Items include on the punch list will determine if any surety may be required to receive a *TCO*.

Sprinkler Final (Fire) – To be conducted in conjunction with *Finals*. Sprinkler system may not be operational until the inspection has passed.

Sprinkler Hydro (Fire) – To be completed before *Finals*. Test is 200 psi for 2 hours with zero loss.

Sprinkler Visual (Fire) – To be completed prior to cover up.

Staffing/Training – Applies to any persons not associated with the General Contractor or their subs, including staff of the future tenant.

Stocking - Items that will be for sale or items for business use including but not limited to food, paper products, clothing, and combustible bins. Basically, any combustible products.

Substantial Completion – Not an occupancy permit. Issued upon 100% completion of the Shell Building/*White Box* and passed *Site Final* Inspection.

Temp C of O (Fire) – To be conducted in conjunction with *Finals*. All other *Finals* have to be completed before *TCO* will be issued.

Temporary Certificate of Occupancy (TCO) – Occupancy certificate, valid for 90 days, issued prior to *C of O*. During this time, you are allowed to staff, stock, occupy and be open to the public while completing your final punch list.

Temporary Substantial Completion – Not an occupancy permit. May be issued for the Shell Building/*White Box* upon completion of all finals except for the site inspection.

White Box – shell building that sublets to various tenant spaces.

Guides to:

Substantial Completion

The *White Box* and the tenant finish out construction can be conducted simultaneously, however the *White Box* must complete the following items before the tenant finish out inspections can be completed:

- 1) All *Final Inspections*, as defined in this document, are completed on the white box.

In order to receive a *Temporary Substantial Completion* or *Substantial Completion* Certificate *interested parties* should contact the *Permit Center* to facilitate the process as early as possible. Notification that *Temporary Substantial Completion* or *Substantial Completion* requirements have been satisfied will be sent electronically to the contacts listed on the permit through the Permit Center. Please ensure that all *interested parties* have their correct emails within the *MPN* permit to ensure proper delivery of notification to all involved. VERBAL PERMISSION IS NOT VALID.

TCO

TCO is required to open the business to the public or conduct operations. Prior to issuance of the *TCO*, no staff, general public or any other non-construction related parties are allowed on site and construction must be nearly completed. All life safety systems must be completed and the *TCO* is valid for 90 days. During this time period the Contractor is able to complete all identified deficiencies. To acquire a *TCO* the following must be completed:

1. All *Final Inspections*, as defined above;
2. *Final Inspections* include, but are not limited to, the following:
 - a. Site hazards mitigated (*BO*);
 - b. Means of Egress (*BO*);
 - c. Site is clean (*BO/FM*);
 - d. Emergency and exit lighting (*BO*);
 - e. Fire Extinguishers (*FM*);

- f. Knox Box key installed (*FM*) (if applicable);
- g. Painting is complete (*FM*);
- h. No overhead construction (*BO/FM*);
- 3. As applicable, *Health Final* passed and *Health Operation Permit* issued;
- 4. All City departments' requirements met (*Permit Center*).

For *Multi-Family* projects with multiple independent buildings a TCO can be issued for each individual building as *Finals* are completed. The final *occupiable building* will not be issued a TCO until all *Finals*, including the *Site Final* have been completed.

For *Multi-Family* projects with only one building TCO is required for the entire structure. TCO will not be issued by floor or unit under any circumstance.

In order to receive a TCO, *interested parties* should contact the *Permit Center* to facilitate the process as early as possible. Notification that TCO requirements have been satisfied will be sent electronically to the contacts listed on the permit through the Permit Center. Please ensure that all *interested parties* have their correct emails within the MPN permit to ensure proper delivery of notification to all involved. VERBAL PERMISSION IS NOT VALID.

Stocking/Staffing/Furniture

Prior to issuance of TCO, it is common for applicants to request that *Stocking/Staffing/installing Furniture* be allowed. It has become a common practice to "stock and train staff" or furnish apartments/hotels prior to opening the business to the public. The Contractor MUST HAVE WRITTEN PERMISSION from both the *BO* and *FM* to allow *Stocking/Staffing/Furniture* move in. The installation of permanent *Fixtures* is not considered "*Stocking*" or "*Furniture*" and can be completed as long as the items meet the definition of "*Fixtures*" as outlined above in the definitions section. The following items are required to be met before *Stocking, Staffing* or *Furniture* move in can be allowed:

- 1) All MEP *Final Inspections* completed;
- 2) If the building has a sprinkler system, the follow applies:
 - a. Sprinkler Hydro (Fire) inspection completed;
 - b. Sprinkler Visual (Fire) inspection completed;
 - c. Alarm system operational to monitor waterflow and contact fire department;
 - d. If the alarm system is not ready, a letter from the sprinkler contractor (on sprinkler company letterhead) can be submitted acknowledging that the system must be kept operational and accepting liability for water damage to structure/contents as a result of unmonitored water flow.
- 3) Cooking operations – *Fixed Suppression System Final (Fire)* inspection required before use for *Training*, "seasoning" or normal operations;
- 4) *Health TCO* inspection completed.

If a fire sprinkler system is not required or installed, omit number two.

C of O

Certificate of Occupancy (C of O) is the final step in the construction process. Once the Contractor has received the *C of O*, the project is considered complete. In order to receive a *C of O*, *interested parties* should contact the *Permit Center* to facilitate the process as early as possible. To obtain a *C of O* from the Permit Center, the follow requirements must be met:

1. All building and site work 100% complete;
2. Completion of all identified deficiencies;
3. *C of O Final (Fire)* inspection passed.

Notification that *C of O* requirements have been satisfied will be sent electronically to the contacts listed on the permit through the Permit Center. Please ensure that all *interested parties* have their correct emails within the *MPN* permit to ensure proper delivery of notification to all involved. VERBAL PERMISSION IS NOT VALID.