

SUB-GRANT AGREEMENT

Smart Home America, Inc.
and
City of Foley

Sub-Grant #SHA-EPA-Foley-001

This document is a Sub-Grant Agreement (“Agreement”) between the Smart Home America, Inc. (SHA) and the City of Foley, AL (“SUB-GRANTEE”), to provide grant funds for the Work specified in SUB-GRANTEE’s Request for 2022 Community Resilience Housing Guide Funding Application which is incorporated herein by reference. The grant funds provided by this Agreement are made available from funds provided by the United States Environmental Protection Agency (“USEPA”) pursuant to create community-wide ownership of a new post-disaster housing recovery plan by enabling local communities to incorporate and implement best practices in pre-disaster mitigation, policy, and planning by bridging the gap between the public and private sectors.

Section 1 - SUMMARY

Project:	City of Foley AL Community Resilience
Award Amount:	\$20,000
Term:	June 1, 2022 – May 30, 2023

Section 1 - PROJECT DESCRIPTION

The City of Foley agrees to create a Hazard Mitigation Plan as well as conduct a comprehensive study of their most vulnerable areas by utilizing a consultant to gather data, create a risk assessment and provide a project list of action items for flooding. SUB-GRANTEE hereby agrees to use the Funds disbursed to it under this Agreement exclusively to pay the costs comprising the Project, all in accordance with the PROJECT DESCRIPTION and Budget. Under this Agreement, SHA agrees to disburse funds in the maximum amount of **Twenty Thousand Dollars and 00/100 Cents (\$20,000.00, the “Funds”)** to SUB-GRANTEE in accordance with the terms herein to pay the costs associated with SUB-GRANTEE’s implementation of the project entitled “City of Foley AL Community Resilience” (“Project”).

Section 2 - REPORTING REQUIREMENTS

- 2.1 **Activity Reports.** In compliance with the reporting requirements, the SUB-GRANTEE must provide written quarterly activity reports to SHA summarizing work undertaken, in progress, or completed. The first quarterly report is due August 31, 2022. Subsequent reports are due thirty days after the end of each quarter. SUB-GRANTEE must provide a notice of completion and a final report within 30 days of the end of the project. The final report is required before final payments will be made. Reports must be delivered to:

Smart Home America, Inc.
Attn: Graham Green
graham@smarthomeamerica.org

- 2.2 **Report Contents.** Quarterly reports must include:
- A. Project objectives
 - B. Activities completed and date of completion; and,
 - C. Problems or unanticipated events encountered and their impact on the plan for implementation.
- 2.3 **Final Reports.** When SUB-GRANTEE has fully and completely performed all the Work included in the PROJECT DESCRIPTION, SUB-GRANTEE shall transmit to SHA a comprehensive report, along with the corresponding results (the “Final Project Report”) and a full accounting of the funds disbursed to it hereunder as compared against the Budget (the “Final Financial Report”). The Final Project Report and Final Financial Report are hereinafter referred to collectively as the “Final Reports”. As appropriate, the Final Project Report should include copies of any publications, press

releases, and other documents, materials, and products developed as part of the Project. Upon approval of the Final Reports by SHA, final payment to SUB-GRANTEE will be processed in accordance with Section 6 of this Agreement.

Section 3 - PERIOD OF PERFORMANCE

The period of performance shall commence June 1, 2022 – May 31, 2023 (“Period of Performance”). The SUB-GRANTEE agrees to complete all Work included in the PROJECT DESCRIPTION within this Period of Performance.

Section 4 - EXPENDITURE COMMITMENT

The SUB-GRANTEE commits to expeditiously expend the Funds provided by this Agreement exclusively for the completion of the tasks included in the PROJECT DESCRIPTION.

Section 5 - MATCHING CONTRIBUTIONS

SUB-GRANTEE may provide matching funds as listed in the PROJECT DESCRIPTION and/or Budget. The match may not occur more than ninety days prior to the award start date and must be directly related to the scope and budget of the award. SUB-GRANTEE is required to provide verifiable documentation that matching funds have been spent and that matching in-kind contributions have been received. All documentation submitted for matching funds must correspond with the PROJECT DESCRIPTION.

Section 6 - CONSIDERATION AND PAYMENT

- 1.1 **Payment.** As consideration for the Work performed under the PROJECT DESCRIPTION, SHA agrees to pay SUB-GRANTEE an amount not to exceed **Twenty Thousand Dollars and 00/100 Cents (\$20,000.00, the “Funds”)**. SHA agrees to make payments within 45 days of receipt of a correct or approved quarterly invoice/request for reimbursement and the supporting documentation. **Invoices/requests for reimbursement may be submitted within thirty (30) days after the end of the quarter in which the work occurred.** Under no circumstances will payment exceed **Twenty Thousand Dollars and 00/100 Cents (\$20,000.00, the “Funds”)**

Match. SHA recognizes that the Sub-Grantee may provide matching funds.

Invoices: Requests for reimbursement submitted by the Sub-Grantee will include:

- 6.1 The Sub-Grant number.
- 6.2 The period services were incurred.
- 6.3 Category breakdown for expenses.

Failure to meet these conditions will result in disallowed costs that will be deducted from the authorized appropriated amount.

Section 7 - SPECIAL CONDITIONS

SUB-GRANTEE shall be bound to SHA by all terms and conditions of this Agreement and, except as otherwise provided herein, by all terms and conditions of the USEPA and SHA Funding Agreement Number MX-00D86619-0, which is incorporated by reference into this Agreement, and is an integral part of this Agreement. An electronic and/or hard copy of the USEPA and SHA Cooperative Agreement Number MX-00D86619-0 can be obtained by contacting SHA representative listed in Section 20.16. Upon receipt of request, a copy will be sent promptly to SUB-GRANTEE. SUB-GRANTEE shall assume toward SHA all the obligations and responsibilities which SHA, through the USEPA and SHA Cooperative Agreement Number MX-00D86619-0 (including all Modifications) assumes towards USEPA. In addition, SUB-GRANTEE shall comply with all applicable requirements of: 2 CFR, Part 200 and 1402, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*; 2 CFR, Part 182 and 1401, "Government-wide Requirements for a Drug-Free Workplace"; and, 2 CFR, Part 180 and 1400, "Non-Procurement Debarment and Suspension". SUB-GRANTEE shall perform all Work in strict accordance with this Agreement.

The Parties expect that SUB-GRANTEE will complete all Work included in the PROJECT DESCRIPTION while staying within the confines of their Budget. The overall total request for reimbursement is not to exceed the maximum amount as defined in Section 6 of this Agreement.

If, at any time during the Period of Performance (as defined in Section 3 of this Agreement), SUB-GRANTEE determines, based on the Work performed to date, that the aggregate costs to complete the Project are likely to exceed the total listed in the Budget, SUB-GRANTEE shall notify SHA immediately in writing.

Additional conditions include:

1. SUB-GRANTEE must comply with the PROJECT DESCRIPTION and Budget included in the Sub-Grantee's proposal and any subsequent modifications approved by SHA. Refer to Section 6 for terms and conditions on Consideration and Payment.
2. SUB-GRANTEE agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project.

3. SUB-GRANTEE hereby agrees that the Work performed for which the funds are awarded shall constitute a fully completed Project upon conclusion.
4. SUB-GRANTEE shall submit to SHA a copy of any executed contracts regarding this Project prior to expending any funds provided by this Agreement for costs incurred in the performance of those contracts.
5. SUB-GRANTEE shall build to applicable local codes and ordinances and recommended FEMA flood elevations.

Section 8 - FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

SUB-GRANTEE shall comply with and all activities under this Agreement shall be subject to all applicable Federal, State, and local laws and regulations, as now existing and as may be amended or modified. This requirement includes, but is not limited to:

1. Federal, State and Local environmental laws and regulations;
2. Federal, State and Local procurement laws and regulations;
3. The National Historic Preservation Act of 1966, as amended;
4. Secretary of Interior Standards;
5. The Native American Graves Protection and Repatriation Act;
6. The National Environmental Policy Act;
7. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, *et seq.*);
8. Title VIII of the Civil Rights Act of 1964 (42 U.S.C. § 3601, *et seq.*);
9. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 -1683, 1685-1686);
10. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101-6107);
11. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
12. The Americans with Disabilities Act of 1990;
13. Section 106 (g) of the Trafficking Victims Protections Act of 2000, as amended (22 U.S.C. § 7104(g));
14. The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141-3148), if applicable;
15. The Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), if applicable;

16. The Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), if applicable;
17. The Fair Labor Standards Act (29 U.S.C. 201, *et seq.*); and,
18. The Drug Free Workplace Act of 1988 (41 U.S.C. 81, *et seq.*).

SUB-GRANTEE is responsible for compliance with State procurement regulations in the procurement of commodities, services, construction work, real property and easement acquisition, and in any other procurement required to complete the Work in the PROJECT DESCRIPTION.

Section 9 - CERTIFICATIONS

The SUB-GRANTEE certifies the following:

- 9.1 **Representation Regarding Gratuities.** SUB-GRANTEE has not violated, is not violating, and promises that it will not violate any prohibition against gratuities as provided under Federal or State Law.
- 9.2 **Representation Regarding Contingent Fees.** SUB-GRANTEE represents that it has not retained a person to solicit or secure a state contract or grant upon an agreement or understanding for compensation, except as disclosed in SUB-GRANTEE'S application.
- 9.3 **Lobbying.** SUB-GRANTEE certifies that it has not, and will not, use Federal appropriated funds to pay any person or organization to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). SUB-GRANTEE must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. This clause must be included in any sub-contracts or sub-grants made by SUB-GRANTEE.
- 9.4 **Legal Authority.** SUB-GRANTEE certifies that it has the legal authority to apply for the program and has the institutional, managerial, and financial capability (including where applicable, funds sufficient or in-kind match to pay SUB-GRANTEE'S share of the project cost) to ensure proper planning, management, and completion of the project described in the proposal.

Section 10 - INDEPENDENT STATUS/REQUIREMENTS REGARDING EMPLOYEES

- 10.1 **Independent Status.** SUB-GRANTEE is an independent sub-grantee of SHA, not an employee, agent, joint venturer, or partner of SHA.
- 10.2 **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between EPA and SHA and SUB-GRANTEE or its representatives. No representative of SUB-GRANTEE shall perform any function or make any decision properly reserved by law or policy to the Federal government.
- 10.3 **Representation of Qualification to Perform.** SUB-GRANTEE represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way to be employees of SHA. SUB-GRANTEE shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required.
- 10.4 **Discrimination Prohibited.** SHA is an equal opportunity employer and maintains a policy which prohibits unlawful discrimination based on race, color, religious creed, sex, age, national origin, handicap, physical or mental disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. SUB-GRANTEE agrees to strictly adhere to this policy in its employment practices and provision of services.

1.1.1 Additionally, SUB-GRANTEE agrees to all of the following, if applicable:

- 1) SUB-GRANTEE will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. SUB-GRANTEE will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Affirmative action includes, but is not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUB-GRANTEE agrees to post in conspicuous places, available to employees and applicants for

employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 2) SUB-GRANTEE will, in all solicitations or advertisements for employees placed by or on behalf of SUB-GRANTEE, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) SUB-GRANTEE will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of SUB-GRANTEE'S commitments under this section and will post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) SUB-GRANTEE will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) SUB-GRANTEE will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance.
- 6) In the event of SUB-GRANTEE's noncompliance with the nondiscrimination clauses of this Agreement or with any of the rules, regulations, or orders, this Agreement may be terminated or suspended in whole or in part and SUB-GRANTEE may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) SUB-GRANTEE will include the entirety of this section in every subcontract, sub-grant or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions are binding upon each subcontractor or vendor. SUB-GRANTEE will take such action with respect to any subcontract, sub-grant,

or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event SUB-GRANTEE becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency it may request the United States to enter into the litigation to protect the interests of the United States.

1.1.2 SUB-GRANTEE further agrees that it will be bound by these equal opportunity clauses with respect to its own employment practices when it participates in federally assisted construction work; provided that if SUB-GRANTEE is a state or local government, this equal opportunity clause is not applicable to any agency, instrumentality or subdivision of the government which does not participate in work on or under the Agreement.

1.1.3 SUB-GRANTEE agrees that it will (1) assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; (2) that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and (3) that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

1.1.4 SUB-GRANTEE further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, SUB-GRANTEE agrees that if it fails or refuses to comply with these undertakings, SHA may take any or all of the following actions: (a) cancel, terminate, or suspend in whole or in part this Agreement; (b) refrain from extending any further assistance to SUB-GRANTEE under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from SUB-GRANTEE; and (c) refer the case to the Department of Justice for appropriate legal proceedings.

Section 11 - ACCESS TO RECORDS.

SUB-GRANTEE agrees that SHA, USEPA, or any of their duly authorized representatives, at any time during the term of this Agreement, has access to, and the right to inspect all work hereunder and to audit/examine any pertinent documents, paper, and records, related to charge and performance under this Agreement. Such records include, but are not limited to, financial records, environmental permits/clearances, procurement documentation, and statistical records. SUB-GRANTEE agrees to refund to SHA any overpayments disclosed by an audit. Records must be kept for a period of three years after final payment, unless SHA authorizes earlier disposal. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it.

Notwithstanding any review or inspection by SHA and its representatives, SUB-GRANTEE shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set for in this Agreement solely by virtue of such inspection or review of the Work. SUB-GRANTEE shall provide SHA and its representatives with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUB-GRANTEE's performance of the Work and completion of the Project.

Section 12 - OWNERSHIP OF INTELLECTUAL PROPERTY

- 1.2 SHA owns all documents and intellectual property created in connection with this Agreement, except for SUB-GRANTEE'S internal administrative and quality assurance files and internal correspondence. SUB-GRANTEE must deliver all documents and working papers to SHA on termination or completion of this Agreement.
- 1.3 SUB-GRANTEE assigns all worldwide interest to the work created under this Agreement exclusively to SHA, including all software code, documentation, design, trademarks, logos and trade dress associated with the work. SUB-GRANTEE disclaims all trademark and copyright interest in the work. SUB-GRANTEE affirms that it has no other intellectual property interest that would undermine this assignment, or the use of the work, and will do nothing to undermine it in the future. SHA assigns SUB-GRANTEE a non-exclusive, commercial, royalty free, non-assignable license to create derivative works using the material developed for this work.

Section 13 - TERMINATION

- 1.4 SHA may terminate this Agreement for any of the following reasons:

- 13.1 **Termination for Cause.** If SHA determines that SUB-GRANTEE has breached any provision of this Agreement, including, without limitation, any failure by SUB-GRANTEE to perform the Work in accordance with the PROJECT DESCRIPTION and Budget, SUB-GRANTEE shall be deemed to be in default of this Agreement and shall constitute cause for SHA to issue a written “Notice to Cure” to SUB-GRANTEE. Any such Notice to Cure shall describe in reasonable detail the basis for SHA’s determination of default and shall provide SUB-GRANTEE with a period of no less than thirty (30) days in which to cure such default (or, if such default is incapable of being cured within thirty (30) days, to commence a cure of such default). If SUB-GRANTEE has not cured or, as the case may be, commenced a cure of, any such default within thirty (30) days of its receipt of a Notice to Cure, SHA may thereafter terminate this Agreement by written notice to SUB-GRANTEE.
- 13.2 **Termination for Convenience.** SHA may, when the interests of the state so require, terminate this Agreement in whole or in part, for the convenience of the state.
- 13.3 **Termination for Insufficient Funds.** SHA’s obligation under this Sub-Grant is conditioned upon the availability of funds from state, federal, or other funding sources. If anticipated funds are ever insufficient or there is a material alteration in the funded program, then SHA may terminate this Agreement with 10 day’s written notice to SUB-GRANTEE. If SHA terminates the Agreement under this subsection, then it does so without any damage, penalty, cost, or expense.
- 13.4 **Mutual Termination.** Upon agreement of both parties, the Agreement can be terminated immediately.
- 13.5 **Force Majeure.** Each party is excused from performance of any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of the party or its contractors. Force majeure events include acts of God, strikes, lockouts, riots, acts of war, epidemics, quarantine restrictions, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters. When such a cause arises, SUB-GRANTEE must notify SHA immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events automatically extend such dates for a period equal to the duration of the delay caused by such events, unless SHA determines it to be in its best interest to terminate the Agreement.
- 13.6 **In Case of Termination.** On the date of termination, SUB-GRANTEE incurs no further obligations regarding the terminated portion of the work. SHA will pay for completed work at the Agreement price. SHA may withhold such sums as SHA considers

necessary to protect the state against loss because of outstanding liens or claims of former lien holders and to reimburse SHA for the excess costs incurred in procuring similar goods and services.

1.5 On termination, SUB-GRANTEE must do all of the following:

1. Terminate outstanding orders and subcontracts as they relate to the terminated work.
2. Settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.
3. Take timely, reasonable, and necessary action to protect and preserve property in its possession in which the state has an interest.
4. Assign SUB-GRANTEE'S rights, titles, and interest under terminated orders or subcontracts to the State, if requested by SHA.
5. If the termination is just for a portion of the work, then complete the non-terminated work duties.

Section 14 - STOP WORK ORDER

14.1 Order to Stop Work

The President/CEO of SHA, may, by written order to the SUB-GRANTEE, require the SUB-GRANTEE to stop all or any part of the work called for by this Agreement. This order shall be for a specified period not exceeding 90 days after the order is delivered to the SUB-GRANTEE, unless the parties agree, in writing, to any further period. Upon receipt of such an order, the SUB-GRANTEE shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of reimbursable costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the President/CEO shall either:

(a) cancel the stop work order; or

(b) terminate the work covered by the order as provided in Section 16.3 Termination of Insufficient Funds or Section 16.2 Termination for Convenience.

14.2 **Cancellation or Expiration of the Order:** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires and the Agreement has not been terminated, the SUB-GRANTEE shall have the right to resume work.

- 14.3 **Failure to Comply with Order to Stop Work:** If the SUB-GRANTEE fails to comply with the stop work order, it does so at its own risk; and SUB-GRANTEE understands and acknowledges that expenses and costs incurred for work performed during the period of time covered by the stop work order may not be reimbursable

Section 15 - LIABILITY AND INDEMNIFICATION

- 15.1 **Liability and Indemnity.** SUB-GRANTEE assumes all liability for work to be performed and for breach of any of the terms of this Agreement. SUB-GRANTEE agrees to indemnify, hold harmless and defend SHA and any and all of its affiliates, directors, commissioners, officers, agents or employees from and against all loss, injury, damage and legal liability including attorneys' fees and other costs of defense, arising out of any breach of confidentiality, negligent act, error or omission of SUB-GRANTEE, its employees or representatives. SUB-GRANTEE assumes all liability for workers' compensation and employers' liability coverage for its own employees. SUB-GRANTEE is responsible for and holds SHA harmless from loss of or damage to SUB-GRANTEE's tools and equipment and rented items which are used or intended for use in performing work, and for any consequential, special or indirect damages, or loss of anticipated profits sustained by SUB-GRANTEE or its independent contractors. SUB-GRANTEE must comply with all applicable laws and government regulations, including OSHA and comparable state requirements.
- 15.2 **Attorneys' Fees and Expenses.** Subject to other terms and conditions of this Agreement, in the event SUB-GRANTEE defaults in any obligations under this Agreement, SUB-GRANTEE must pay to SHA all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by SHA in enforcing this Agreement or otherwise reasonably related thereto. SUB-GRANTEE agrees that under no circumstances is SHA obligated to pay any attorneys' fees or costs of legal action to SUB-GRANTEE.

Section 16 - MISCELLANEOUS

- 16.1 **Severability.** Each provision of this Agreement must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the Agreement remains in full effect.
- 16.2 **Entire Agreement.** This Agreement and its attachments are the entire understanding between the parties.

- 16.3 **Changes.** The parties can amend this Agreement only by a written document signed by both parties.
- 16.4 **No Delegation.** SUB-GRANTEE acknowledges that it was selected by SHA to perform the work based upon SUB-GRANTEE'S special skills and expertise. SUB-GRANTEE must not delegate its duties under this Agreement in whole or in part without the prior written consent of SHA. SHA may, in its sole discretion, approve, approve with conditions, or deny consent without reason. Any attempted delegation or transfer of its obligations without consent is null and void. No approval by SHA of any subcontract or sub-grant is consent to increase the maximum price of this Agreement.
- 16.5 **Disputes.** Before pleading to any judicial system at any level, SUB-GRANTEE must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of SHA. The decision of the Executive Director will be reduced to writing and a copy thereof mailed or furnished to SUB-GRANTEE within fourteen (14) days after receipt of information requested by SHA or the Executive Director.
- 16.6 **Governing Law/Forum Selection.** This Agreement shall be governed and construed in accordance with the laws of the State of Alabama. Any legal proceeding relating to the Agreement shall be brought in a State Court located in Baldwin County, Alabama, and any and all other courts, including but not limited to U.S. District Courts, regardless of jurisdiction, are specifically excluded.
- 16.7 **Conflict of Interest.** SUB-GRANTEE shall immediately notify SHA in writing of any potential conflict of interest resulting from the representation of or service to SUB-GRANTEE'S clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, SUB-GRANTEE shall notify SHA of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to SHA's satisfaction, SHA reserves the right to terminate this Agreement per the Section 16.2, Termination for Convenience clause.
- 16.8 **Insurance.** If SUB-GRANTEE maintains insurance against liability for injury to persons or property, or if it procures such insurance during the term of this Agreement, it should have the USEPA and SHA named as additional insureds on all such policies for any work performed by SUB-GRANTEE pursuant to this Agreement and provide SHA with appropriate Certificates of Insurance reflecting such additions within thirty (30) days after this Agreement is fully-executed.
- 16.9 **Public Records.** SHA shall be responsible for responding to any public records requests related to this Agreement. SHA will respond to requests addressed to either of the parties herein. SUB-GRANTEE shall notify and provide a copy of any public information request addressed to SUB-GRANTEE within one (1) working day. No

party to this Agreement shall be liable to the other party for disclosure of information required by court order or required by law.

- 16.10 **Public Announcements.** Unless otherwise required by applicable law (based upon the reasonable advice of counsel), SUB-GRANTEE shall not make any public announcements with respect to this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of SHA, and the Parties shall cooperate as to the timing and contents of any such announcement.
- 16.11 **Oral Statements.** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by SHA.
- 16.12 **Third Party Action Notification.** SUB-GRANTEE shall give SHA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUB-GRANTEE by any entity that may result in litigation related in any way to this Agreement.
- 16.13 **Waiver.** No delay or omission by either party to this Agreement in exercising any right, power, or remedy hereunder or otherwise afforded by the Agreement, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either Party to this Agreement shall be valid unless set forth in writing by the Party making said waiver. No waiver or modification to any term or condition of this Agreement will void, waive, or change any other term or condition. No waiver by one party to this Agreement of a default by the other party will imply or be construed as to require waiver of future or other defaults.
- 16.14 **Headings and Summary.** The headings and the Summary in this Agreement are for convenience only and are not a complete expression of the terms of this Agreement. In any case in which the terms of the Agreement and the Summary conflict, the terms of _____ the _____ Agreement _____ control.
- 1.6 **Notices:** All notices required or permitted to be given under this Agreement must be in writing and personally delivered or sent by Certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

The undersigned hereby execute this agreement and assure that the authority to execute this agreement has been granted by the appropriate governing bodies.

SMART HOME AMERICA, INC.
GRANTEE

CITY OF FOLEY
SUB-GRANTEE

Julie Shiyou-Woodard Date
President/CEO

Date