RESOLUTION NO. 4847

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA AUTHORIZING THE CITY MANAGER TO SIGN A SUB-RECIPIENT AGREEMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT REVOLVING LOAN FUND WITH PARK COUNTY MSU EXTENSION OFFICE.

WHEREAS, the City of Livingston has applied to and been approved by the Montana Department of Commerce to receive grant funds under the Montana Community Development Block Grant Economic Development Program ("CDBG"); and

WHEREAS, on May 1, 2019, the City authorized a sub-grant of the CDBG funds to Park County MSU Extension Office and engaged Park County MSU Extension Office to administer the City of Livingston and Park County Revolving Loan Fund for a period of twenty-four months; and

WHEREAS, the City Manager is ready, willing and able to execute the Agreement upon Commission’s approval of this Resolution.

NOW, THEREFORE, BE IT RESOLVED, by the City Commission of the City of Livingston Montana as follows:

The City Manager is hereby authorized to enter into the Agreement with Park County MSU Extension, which document is hereto and incorporated herein as Exhibit A.

PASSED AND ADOPTED by the City Commission of the City of Livingston, this 7th day of May, 2019.

Dorel Hoglund, Chair
RESOLUTION NO. 4847
AUTHORIZING THE CITY MANAGER TO ENTER INTO A SUB-RECIPIENT AGREEMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT REVOLVING FUND WITH PARK COUNTY MSU EXTENSION.

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SUB-RECIPIENT AGREEMENT FOR
COMMUNITY DEVELOPMENT BLOCK GRANT REVOLVING LOAN FUND

THIS AGREEMENT is entered into this 1st day of May, 2019, by The City of Livingston, Montana herein referred to as the “City” and Park Local Development Corporation, a nonprofit economic development corporation herein referred to as the “Sub-Recipient.”

WITNESSETH THAT:

WHEREAS, The City of Livingston has applied to and has been approved by the Montana Department of Commerce (“Department”) for the receipt of grant funds under that Montana Community Development Block Grant (CDBG); and

WHEREAS, the City wishes to use present and future CDBG grants and loan fund revenue to further develop the "CDBG Revolving Loan Fund" (RLF) which is designed to leverage private investment in businesses for the purpose of generating new jobs within the City of Livingston and Park County; and

WHEREAS, the City has entered in an Agreement with the Sub-Recipient dated May 1, 2019 to subgrant the CDBG funds to the Sub-Recipient and engage the Sub-Recipient to administer the City of Livingston and Park County RLF jointly on their behalf for a period of twenty-four months; and

WHEREAS, the City expressly acknowledges that the funds are being managed as a pooled resource with those of the City of Livingston RLF, yet separately accounted for, and hereby further acknowledges that neither the City Commissioners nor any agents or employees of the County/City may override the loan authority granted herein to the Sub-Recipient; and

WHEREAS, the City desires to sub-grant the CDBG funds to the Sub-Recipient and engage the Sub-Recipient to administer the RLF on the City’s behalf; and

WHEREAS, Park Local Development Corporation is qualified as a nonprofit organization serving the development needs of the communities of non-entitlement areas as defined by §105(a)(15) of Title I of the Housing and Community Development Act (the “Act”); and

WHEREAS, loan repayments made back to a qualified nonprofit entity defined by §105(a)(15) of the Act are considered miscellaneous revenue and would not be subject to federal program income requirements, except as mutually agreed to by the Sub-Recipient, the City, and the Department; and

WHEREAS, the parties to this Agreement understand that neither of them has in any way, expressly or impliedly, abrogated any of its individual powers, and further agree that this Agreement does not create any new organization or legal entity.
NOW, THEREFORE, in consideration of the mutual covenants and conditions set out in this Agreement, the parties agree the forgoing statement of fact are true and correct and further agree as follows:

A. **SPECIAL PROVISIONS.** The City agrees, under the terms and conditions of this Agreement, to sub-grant CDBG loan funds as a loan for gap financing and technical assistance to the Sub-Recipient.

B. **INDEPENDENT SUB-RECIPIENT.** It is understood by the parties hereto that the Sub-Recipient is an independent Sub-Recipient and that neither its principals nor its employees, if any, are employees of the City for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Sub-Recipient has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principals and employees for the services to be performed hereunder.

C. **SUBCONTRACTORS.** If Sub-Recipient hires or retains any subcontractors to perform duties and/or functions of this agreement the subcontractors shall be required to abide by the terms of this agreement. The Sub-Recipient shall be responsible for any and all actions of any subcontractors and shall indemnify, as set forth in this agreement, the City against any actions and/or claims arising from the contracting with subcontractors.

D. **COMPENSATION.** The Sub-Recipient will retain all program income including principal and interest as the result of this grant award. These funds will be used to enhance a Revolving Loan Fund for the benefit of all eligible businesses located within Park County. The Sub-Recipient will be responsible for administration, management, and recording of fund income.

For satisfactory completion of the services rendered under this Contract, the Sub-Recipient shall retain on an annual basis 1) the greater of $7,000 or eighteen percent (18%) of the total payments on interest and principal from loan repayments, plus 2) 18% of the interest earned on the principal balance. However, in the event of an early loan payoff, the Sub-Recipient shall retain 1% of the loan payoff amount as an administrative fee (in addition to all fees already paid/ due as set forth herein) rather than the aforementioned 18% fee on the loan principal and interest, the balance of which is being paid off early. The Sub-Recipient may retain and pay such compensation to itself in installments, not more frequently than monthly. In no case, except for the Sub-Recipient’s expenses for attorney fees and attorney costs related to collection efforts as described in subsection 6 of this section, shall the payment for services to the Sub-Recipient result in a decrease of the base principal amount of the fund as determined on a yearly basis.

E. **SCOPE OF SERVICES.** The Sub-Recipient will perform the following services:

1. The Sub-Recipient will be responsible for all aspects of the CDBG financing program,
including the following:

a. Develop, apply, and enforce written policies and procedures as they relate to the City and County RLF programs within the conditions established under the CDBG program, including the creation of a Program Income Management Plan and operation of an RLF loan committee to review and act upon loan requests;

b. Manage the application process through loan approval, including:
   i. Providing assistance to prospective borrowers in completing loan application materials;
   ii. Conducting UCC lien searches, if applicable and pertinent to the proposed loan collateral;
   iii. Providing project analyses to the RLF loan committee;
   iv. Coordination of RLF loan committee meetings; and
   v. Presenting proposed projects to the RLF loan committee for loan approval or denial. Decisions as to loan approval or denial will be the sole responsibility of the RLF loan committee, and the City and County will have no authority or ability to intervene in the loan approval, loan management, or loan servicing and collections processes.

c. Management of loan closing and documentation, including:
   i. Completion of loan documentation using appropriate loan documentation software;
   ii. Loan closing, to be conducted by the proposer, or by a title company;
   iii. Funds disbursement and payment processing, utilizing the GMS Loan Accounting or equivalent software; and
   iv. Collection and retention of loan fees and charges within defined policies and procedures.

d. Loan servicing oversight, including:
   i. Gathering and analyzing monthly or quarterly financial reports from borrowers as required by the applicable loan agreement;
   ii. Tracking and monitoring the status of borrower insurance policies;
   iii. Tracking and monitoring UCC financing statement filings and renewals; and
   iv. Providing monthly loan updates to the RLF loan committee.

e. Processing and adequately accounting for monthly loan payments. Including:
   i. Tracking, receiving, processing, and accounting for all monthly loan payments;
   ii. Tracking late payments and mailing late notices and/or calling delinquent borrowers, as needed;
   iii. Working with delinquent borrowers to cure defaults and, where
appropriate, develop a work-out plan, subject to the approval of the RLF loan committee.

f. Monitoring and processing of all forfeitures of loan collateral and using commercially reasonable efforts to collect delinquent and defaulted loans, including the filing of creditor's claims in bankruptcy, where applicable, subject to the approval of the RLF loan committee.

2. During the term of this Agreement, the Sub-Recipient will maintain reasonable records of its performance under this Agreement in a manner consistent with generally accepted accounting principles. The Sub-Recipient will provide the City (or its authorized representatives) access to these records at any time during normal business hours. Upon written request of the City, the Sub-Recipient will submit to the City, in the format prescribed by the City, quarterly status reports on its performance under this Agreement.

3. Except as set forth in Section (4) below, the Sub-Recipient will retain, administer, manage, record, and account to the City for all RLF loan fund revenue received subsequent to the date of this Agreement, including principal and interest received from borrowers. Sub-Recipient will use such revenue to enhance the RLF program for the benefit of all eligible borrowers located within Park County.

4. Sub-Recipient is entitled to use RLF funds for any costs incurred by the Sub-Recipient in connection with the collection of delinquent or defaulted loans, including but not limited to any filing fees or legal fees and costs. It is specifically agreed and understood that any such use of RLF funds in this manner by the Sub-Recipient is separate and distinct from the payment the Sub-Recipient will be receiving for its services; that is to say, costs and fees incurred in connection with the collection of delinquent or defaulted loans will be paid by RLF funds and not by the Sub-Recipient.

6. The Sub-Recipient will comply with the Program Income Management Plan as approved by the City and Department. If the Sub-Recipient ceases to exist or an Event of Default occurs, all program income relating to this loan, including funds on hand and accounts or notes receivable, will revert to the City.

F. DURATION OF AGREEMENT. This Agreement supersedes all previous agreements, whether written or oral, between the City and the Sub-Recipient dealing with the City of Livingston/Park County RLF program. The term of this Agreement shall be twenty-four months, commencing on the date of execution by the parties. This Agreement will terminate upon expiration or its initial term, unless extended in writing by mutual agreement of the parties, or if either party fails to meet the conditions of this Agreement or if an Event of Default occurs, after notice and opportunity to cure is provided.

G. CONFLICT OF INTEREST. The Sub-Recipient covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the CDBG-ED project which would conflict in any manner or degree with the performance of its services hereunder.
The Sub-Recipient further covenants that, in performing this Contract, it will employ no person who has any such interest.

H. DISPOSITION OF REAL PROPERTY OR EQUIPMENT ACQUIRED. Upon the expiration of the Agreement, the Sub-Recipient will transfer to The City of Livingston any CDBG-ED funds on hand at the time of expiration and any accounts receivable attributable from the use of CDBG-ED funds. With respect to any real property or equipment under the Sub-Recipient control that was acquired or improved in whole or in part with CDBG-ED funds in excess of $25,000, the Sub-Recipient will either:

1. Use the property to meet the national objectives contained in 24 CFR section 570.901 for five (5) years after expiration of the Agreement; or

2. Dispose of the property in a manner consistent with OMB Circular A-102 Attachment “n” and as approved by the Department. Reimbursement is not required after the period of time specified in the first paragraph of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR 570.504 (program income).

I. DOCUMENTS INCORPORATED BY REFERENCE. The City of Livingston’s application to the Department for CDBG-ED funding and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Sub-Recipient.

J. CIVIL RIGHTS ACT OF 1964. The Sub-Recipient will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VI, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

K. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Sub-Recipient will comply with the following provision:

No person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

L. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Sub-Recipient will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-ED assisted project will be extended to lower income project area residents. Further, the Sub-Recipient will, to the greatest extent feasible, utilize business concerns located in or substantially owned by
residents of the project area, in the award of contracts and purchase of services and supplies.

M. MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Sub-Recipient will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Sub-Recipient will document all affirmative steps taken to solicit minority businesses and will forward this documentation along with the names of the minority subcontractors and suppliers to the local government CDBG-ED recipient upon request.

N. NONDISCRIMINATION. The Sub-Recipient will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

O. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Sub-Recipient pursuant to this Contract are the property of the City and the Department which have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. No material produced in whole or in part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the City and the Department.

P. REPORTS AND INFORMATION. The Sub-Recipient will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City or its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Contract unless permission to destroy them is granted by the City.

Q. ACCESS TO RECORDS. It is expressly understood that the Sub-Recipient's records relating to this Contract will be available during normal business hours for inspection by the City, Department, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst.

R. INDEMNIFICATION. The Sub-Recipient waives any and all claims and recourse against The City of Livingston including the right of contribution of loss or damage to person or property arising from, growing out of, or in any way connected with or incidental to the Sub-Recipient's performance of this Agreement, except claims arising from the concurrent or sole negligence of The City of Livingston or its officers, agents or employees. The Sub-Recipient will indemnify, hold harmless, and defend The City of Livingston against any and all claims, demands, damages, costs, expenses, or liability arising out of the Sub-Recipient's performance of this Agreement except for liability
arising out of the concurrent or sole negligence of The City of Livingston or its officers, agents, or employees.

S. INSURANCE. It is advised that Sub-Recipient consult with their insurer or attorney for more specific advice on provisions that they may want to include under this section, or any other section of this agreement.

T. TERMINATION OF AGREEMENT. If any of the following events occur, the City of Livingston may, in its sole discretion, declare such event a default under this Agreement:

1. Any representation or warranty made by the Sub-Recipient in this Agreement or in any request or certificate or other information furnished to the City under this Agreement proves to have been incorrect in any material respect; or

2. The Sub-Recipient fails in any material respect to carry out its obligations under its proposal to the City for the assistance provided under this Agreement.

If the Sub-Recipient fails to perform any of its duties under this Agreement or if any event of default occurs, the City may declare the Sub-Recipient to be in default and thereafter give the Sub-Recipient written notice setting forth the action or inaction which constitutes the default and giving the Sub-Recipient 45 days in which to correct the default. If the Sub-Recipient fails to correct the default within 45 days of receipt of this notice, may notify the Sub-Recipient in writing that any amount that is payable under this Agreement is due and payable in full within 45 days and this Agreement is terminated.

It is agreed by the parties that the provisions of this Agreement provide for reasonable and sufficient notice to be given to the Sub-Recipient in case of the Sub-Recipient's failure to comply with any of its covenants and that this notice is sufficient for the Sub-Recipient to rectify its actions or inactions of default.

The waiver by the City of any default by the Sub-Recipient does not constitute a waiver of a continuing breach or a waiver of a subsequent breach. Any agreement contrary to this Agreement is not binding upon either party unless it is in writing and signed by both parties.

U. CONSTRUCTION AND VENUE. This Agreement will be construed under and governed by the laws of the State of Montana. The City of Livingston and the Sub-Recipient agree that performance of this Agreement is in the County of Park, State of Montana and that in the event of litigation concerning it, venue is in the District Court of the 6th Judicial District in and for the County of Park, Montana.

V. ELIGIBILITY. The Sub-Recipient certifies that the Sub-Recipient's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)
This Sub-Recipient Agreement has been approved by the City of Livingston and Park Local Development Corporation Board of Directors.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the 1st day of May, 2019.

**SUB-RECIPIENT:**

Katie Weaver, Director  
Park Local Development Corporation  

Attest:

Cyndy Rigler, President  
Park Local Development Corporation  

**CITY:**

Mike Kardoes, City Manager  
City of Livingston  

Attest:

Lisa Harreld, Recording Secretary  
City of Livingston