

**KELLY LAKE COMMUNITY CENTRE SOCIETY
USE AND OPERATING AGREEMENT**

THIS AGREEMENT dated for reference the 25th day of September, 2017.

BETWEEN:

**PEACE RIVER REGIONAL DISTRICT,
Box 810, 1981 Alaska Avenue, Dawson Creek, B.C. V1G 4H8**

(the "Regional District")

OF THE FIRST PART

AND:

**KELLY LAKE COMMUNITY CENTRE SOCIETY
Society Number S-50241
PO Box 206, Tomslake, BC V0C 2L0**

(the "Society")

OF THE SECOND PART

WHEREAS:

- A. The Regional District is the registered owner in fee simple of that land commonly referred to as the Kelly Lake Community Centre at 107 Kelly Lake Road located in the Peace River Regional District and legally described as:
Parcel Identifier: 014-683-687
Block A of District Lot 314 Peace River District

(the land and premises hereinafter collectively called the "Facility")

- B. The Regional District and the Society wish to enter into an agreement for the use and occupancy of the Facility for the sole purpose of operating, managing and maintaining a community centre and providing programs, activities, rooms and services at the community centre for members of the Kelly Lake community.
- C. The Society agrees to use and occupy the Facility on the terms and conditions contained in this Agreement.

THIS AGREEMENT is evidence that in consideration of the premises and the covenants hereinafter contained the parties hereto covenant and agree, each with the other as follows:

Term

1. The term of this Agreement shall be for the period of five (5) years commencing on May 25, 2017 and terminating on September 25, 2020.

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Rent

2. In return for use and occupancy of the Facility, the Society will pay the Regional District rent of \$1.00 in each year of the Term, the receipt of which is hereby acknowledged.

Renewal

3. Upon expiry of the Term, the Agreement may be renewed by confirmation in writing by the parties for an additional five (5) years provided all obligations of the Agreement are met.

Use

4. (a) The Society shall use the Facility solely for the purpose of operating a community centre for use by members of the Kelly Lake community and for other related uses as may be approved from time to time by the Regional District.
- (b) All activities at the Facility must be conducted in a safe and secure manner and the Society shall conduct its operation in a business-like, organized, efficient manner of a standard equivalent to similar venues.
- (c) It is hereby understood that the Facility is provided for multi-purpose community recreation, and short-term education and training and will be available, under the coordination of the Society, to other groups and members of the general public for activities consistent with its intended use. The Society shall act as stewards of this community access to ensure all obligations under this Agreement are met. Any groups wishing to rent the facility for education and training purposes in excess of 30 days, must be approved in advance by the Regional District Board and must enter into a long-term lease agreement.
- (d) The Society accepts that use and occupancy of the Facility is in an 'as is' condition and the Regional District has not made any representations, warranties or agreements as to the condition of the Facility including the suitability for the Society's purposes.
- (e) The Society accepts responsibility and the cost of remediation for any damage, including environmental damage, resulting from the Society's use of the Facility. No potential environmental contaminants may be brought by the Society into the Facility.
- (f) The Society shall require any person or group (the "User") utilizing the Facility to enter into a formal facility rental agreement in the form attached as "Appendix A".
- (g) The Society may refuse to permit any person or group to use the Facility if the person or group has an unpaid account in respect of the use of the Facility, or if the Society or the Regional District considers that the proposed use would not comply with the restrictions in this Agreement.
- (h) The Society may serve or allow for the service of alcohol in the Facility during such special events if the Society or the user group:
 1. obtains party alcohol liability insurance in an amount of not less than \$5,000,000.00 per occurrence, or such greater amount as may be required by the Regional District from time to time, and

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2. obtains all required liquor and business licenses and permits, and complies with the terms thereof and with all applicable laws, regulations and orders of government authorities having jurisdiction, and has ensured that every person serving alcohol at the event has successfully completed an alcohol service training program.

Improvements

5. (a) No major renovations or structural improvements whatsoever shall take place at the Facility without the express authorization of the Regional District in advance.
- (b) To ensure the safe use and security of the Facility, the Regional District may require the Society to make improvements to the Facility at any time. Failure to respond in a timely fashion to these requests shall be considered a default of this Agreement.
- (c) Any improvements made to the Facility by the Society during the Term shall, upon termination of this Agreement, become the property of the Regional District free and clear of all liens, costs or charges and the Society shall indemnify and save harmless the Regional District from any and all liability whatsoever for such liens, costs and charges. Upon termination and the vesting of such improvements in the Regional District, the Society shall have no right to compensation whatsoever for such improvements.
- (d) Equipment and appliances not structurally attached or inherent to the Facility may be removed by the Society upon expiry of the term.

Maintenance

6. (a) The Society shall, during the term of this Agreement, repair and maintain the Facility in a safe, clean and sanitary condition, to take all reasonable precautions to ensure the safety of all people using the Facility and, on notice from the Regional District, to make the Facility safe, clean and sanitary to the Regional District's satisfaction.
- (b) The Society shall pay all accounts and expenses from labour performed on, or material supplied to, the Facility, to promptly discharge any builders' lien that may be filed against the title to the Facility relating to any improvements, work or construction it undertakes at the Facility and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, work or construction undertaken at the Facility.

Costs, Fees & Revenues

7. (a) The Society shall hold all service and utility accounts for the Facility in its name, pay all costs and expenses of any kind whatsoever associated with or payable regarding the Facility, including but not limited to, permit and license fees, repair and maintenance costs, administration and service fees, telephone, electrical, hydro, water, sewage disposal and other utility charges and payments for work and materials.
- (b) Where the Regional District's annual budget so provides, the Regional District may, but is not obligated to, pay to the Society an annual operating contribution for the operation of the Facility, the amount of which operating contribution would be calculated based on an approved annual budget, submitted by the Society in accordance with this Agreement. The Society would be required to use such funds for the sole purpose of carrying out its obligations to operate, repair

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and maintain the Facility in accordance with the terms and conditions of this Agreement. Any excess funds shall be retained in a surplus account for application to future expenses under this Agreement.

- (c) In accordance with section 7 (b), operating funds will be payable by the Regional District to the Society on a monthly basis upon receipt of a trial balance or income statement along with copies of invoices paid in the previous month.
- (d) No later than December 1st of each year during the Term, the Society shall submit to the Regional District an annual operating budget for the Facility for the following year.
- (e) The Society may charge rental fees and collect damage deposits for public use of the Facility. A copy of the current fee schedule shall be provided to the PRRD. Rental fees may be amended by the Society upon written approval from the Chief Administrative Officer of the Peace River Regional District, upon which approval the fee schedule may be amended and shall be provided to the PRRD.
- (f) The Society may retain all gross revenue collected with respect to the public operation of the Facility and must use such revenue for the sole purpose of carrying out its obligations to operate, repair and maintain the Facility in accordance with the terms and conditions of this Agreement.

Facility Management and Reporting

- 8. (a) The Society shall employ and provide the services of such staff, contractors and Volunteers as are necessary to safely and efficiently carry out the obligations and responsibilities of the Society under this Agreement. The Society shall train, supervise and remunerate or cause to be hired, trained, supervised and remunerated, all employees, contractors and volunteers required to safely and efficiently carry out the obligations and responsibilities of the Society under this Agreement. The Society shall provide to the Regional District from time to time, on request, a list of names and positions of such staff, contractors and volunteers.
- (b) The Society shall ensure that the Society has obtained in respect of every person hired to carry out the obligations and responsibilities of the Society under this Agreement, whether as an employee, contractor or volunteer, a complete and current criminal record check with satisfactory results.
- (c) The Society shall not discriminate against any person contrary to the *Human Rights Code* (British Columbia).
- (d) The Society shall ensure that there is at least one individual on duty with first aid training during activities occurring at the Facility that present a risk of injury to any persons.
- (e) Upon entering into this agreement, the Society must submit for approval of the Regional District detailed procedures and action plans outlining the emergency and evacuation procedures which the Society will follow in the event of any of the following incidents:
 - the sounding of smoke, fire or other alarms;
 - lighting failure;
 - power failure;
 - bomb threat;

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- threat of riot;
- gas leak;
- lost person;
- death or injury;
- burglary;
- earthquake; and
- other situation where there may be risk to the public or staff,

and the Society must follow these procedures and plans throughout the Term.

- (f) The Society shall post signs, and otherwise ensure that users of the Facility and the public know the required safety precautions required at the Facility and the procedures to be followed in the event of an accident, emergency or evacuation situation.
- (g) The Society shall ensure that its contact person is available by telephone twenty four (24) hours per day.
- (h) The Society shall report immediately to the Regional District any incidents or accidents that required emergency services by police, fire, or ambulance services or hospitalization of any user of the Facility.

Financial Reporting

- 9. (a) The Society shall keep separate and distinct books of account, receipts, records, vouchers, cheques, papers and documents in relation to the Society's management and operation of the Facility according to generally accepted accounting standards and in a manner acceptable to the Regional District.
- (b) On or before February 15th of each year, commencing February 15, 2016, the Society shall provide to the Regional District financial statements for the immediately preceding calendar year respecting the management and operation of the Facility and setting out the gross revenue and expenses in relation thereto.
- (c) The Regional District retains the right to have all financial statements pertaining to this Agreement audited at its own expense, with the Society's full cooperation.

Annual Reporting and Access to Records

- 10.(a) The Society shall provide the Regional District with a comprehensive annual report on or before February 15th of each year, in a form acceptable to the Regional District, addressing at least the following items related to the previous calendar year:
 - 1. attendance numbers for all admissions and rentals;
 - 2. safety;
 - 3. facility inspection;
 - 4. 5-year capital plan;
 - 5. incidents;
 - 6. accidents; and
 - 7. equipment inventory.

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- (b) The Society agrees that the Regional District and its auditors, upon request, shall have access to the books of account, records, vouchers, cheques, papers and documents of and which may relate to the operation, repair and maintenance of the Facility.

Termination

11. (a) Should the Society default on any of the covenants contained herein, the Regional District may terminate this Agreement and retake possession of the Facility should the Society fail to rectify such default within ten (10) days of being given notice to do so.
- (b) This Agreement may be terminated by either party upon giving sixty (60) days' notice of its intention to so terminate.
- (c) Upon the expiry or earlier termination of this Agreement, the Society shall peacefully quit and deliver possession of the Facility to the Regional District and leave any improvements on or to the Facility in a safe, clean and sanitary condition; and, no amount will be owed by the Regional District to the Society on account of any lost revenues relating to Facility operations.

Right of Entry

12. The Regional District including its employees, agents or representatives may enter the Facility at any time for the purposes of inspection, inventory or to access equipment and services necessary for operation of the other assets on the property. Notice will be provided to the Society of the planned entry as soon as possible and preferably prior to accessing the Facility.

Encumbrances

13. The Society shall not mortgage, charge or otherwise encumber its interest in the Facility.

Assignment

14. The Society shall not assign nor sublet this Agreement except with the written consent of the Regional District.

Indemnity

15. The Society will indemnify and save harmless the Regional District and all of its employees, servants, representatives and agents, from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) which the Regional District or its employees, servants, representatives or agents incur, suffer or are put to arising out of or in connection with any activities of the Society that in any way directly or indirectly arise from the occupation, activities or actions of the Society or any other person authorized or permitted by the Society to be at the Facility, or any failure, breach or non-performance by the Society of any obligation of this Agreement, or any wrongful or negligent act of the Society or any employee or agent of the Society.

Insurance

16. (a) The Society shall, during the Term of this Agreement, carry general public liability insurance in a form acceptable to the Regional District in an amount of not less than Five Million (\$5,000,000)

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dollars covering each individual occurrence and the policy shall name the Regional District as an additional insured. A copy of proof of insurance shall be provided to the Regional District at the beginning of each year of this Agreement.

- (b) The Regional District shall, during the Term of this Agreement, carry property and contents insurance for the present day replacement value of the building and its contents. The Society shall advise the Regional District on an annual basis, prior to November 1st of each year, of the present day value of the contents of the building.
- (c) As the stewards for community use of the Facility, the Society will ensure that all rental users will have appropriate liability insurance. All contractors retained by the Society for work at the Facility shall have WorkSafe BC coverage and appropriate liability insurance. Documentation of these requirements shall be available to the Regional District upon request.

Compliance with Laws and Regulations

- 17. (a) The Society shall carry on and conduct its activities in, on and from the Facility in compliance with any and all statutes, enactments, bylaws, regulations, orders and insurance policies from time to time in force, including all of the Regional District's bylaws affecting or relating to the use or development of the Facility or the construction, alteration, servicing, maintenance or use of improvements, to obtain all approvals and permits required for such activities and to comply with all Local Government, Provincial and Federal legislation relating thereto.
- (b) The Society shall not permit the use of the Facility for any unlawful use or for any use, performance or activity that the Regional District in its discretion considers obscene, racist, offensive to some members of the public, inconsistent with the policies of the Regional District as those policies may change from time to time, or otherwise unsuitable for a public facility. The Society shall provide the Regional District with advance written notice of any booking requests that might be of a controversial nature or raise possible concerns.

Nuisance

- 18. The Society shall not cause nor permit any act or thing to be done at the Facility which is, or would constitute a nuisance to the owners or occupiers of any lands or premises adjoining the Facility, or in the vicinity of the Facility, or to the public in general and shall indemnify and save harmless the Regional District from any liability therefor.

Society Representations and Warranties

- 19. The Society represents and warrants to the Regional District that:
 - (a) it is a society in good standing under the laws of British Columbia and does not conduct its activities with a view to obtaining, and does not distribute, profit or financial gain for or to its members;
 - (b) it has the power and capacity to enter into and carry out its obligations under this Agreement; and
 - (c) it has completed all necessary resolutions and other preconditions to validly enter into this Agreement.

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Cessation of the Society

20. Should the Society, at any time during the Term, cease to exist as a registered society, then and in that event, its right of use and occupancy and any other rights hereunder shall be forthwith terminated, but nevertheless the assets of the Society shall be chargeable for any liability remaining unpaid at such time to the Regional District, including any cost related to returning the Facility to its original state.

No Partnership or Joint Venture

21. Nothing contained in this Agreement shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent or partnership or of joint venture between the parties or as giving the Society any power or authority to bind the Regional District in any way.

Succession

22. This Agreement will remain in effect after its expiration date to facilitate negotiations for renewal of the Agreement. This succession will be considered a temporary, month-to-month arrangement and continue to be subject to all terms of this Agreement.

Notices

23. Any notice, report or other document that either party may be required or may wish to give to the other must be in writing, unless otherwise provided for, and will be deemed to be validly given to and received by the addressee, if served personally, on the date of such personal service or, if delivered by mail, fax or email, when received. Any such notices shall be delivered to the addresses of each party first above written. Either party may, from time to time, advise the other by notice in writing, of any change of address of the party, giving such notice and from and after the giving of such address specified therein this shall, for the purpose of this paragraph, be conclusively deemed to be the address of the party giving such notice.

Entire Agreement

24. This Agreement shall be deemed to constitute the entire Agreement between the Regional District and the Society with respect to the matter hereof and shall supersede all previous negotiations, representations, and documents in relation hereto made by either party to this Agreement.

Waiver

25. No waiver by either party of any breach by the other party of any of its covenants, obligations and agreements will be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor will any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

Miscellaneous

26. The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of the Agreement.

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27. In this Agreement, wherever the singular or masculine is used, it shall be construed as if the plural or feminine or body corporate as the case may be, had been used where the context of the parties hereto so require.
28. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and assigns.

IN WITNESS WHEREOF the parties have duly executed this agreement, and affixed their seal, if appropriate, on the respective dates written below.

PEACE RIVER REGIONAL DISTRICT

Chair

Chief Administrative Officer

Date:

Oct 11/17

KELLY LAKE COMMUNITY CENTRE SOCIETY

Authorized Signatory

PRINT NAME

Authorized Signatory

PRINT NAME

Date:

Sept 25/2017



Witness signature

Witness name

Witness address

Witness signature

Witness name

Witness address

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Appendix 'A'

KELLY LAKE COMMUNITY CENTRE FACILITY RENTAL AGREEMENT

Rules Governing the Use of Facilities

1. The Applicant must sign and date this Facility Use Agreement before deemed to have been granted permission to use the facilities.
2. The Applicant agrees to use the Facility only for the purpose listed and for no purposes other than public recreation (including such events as weddings, birthday parties, community suppers, funerals, etc.) and short-term education and training.
3. The Applicant agrees that the Kelly Lake Community Centre Society may terminate this agreement if the Applicant fails to comply with this Agreement or any of the Rules Governing Use of Facilities.
4. The Applicant will provide evidence of liability insurance in the amount of Two Million Dollars (\$2,000,000) naming the Peace River Regional District and Kelly Lake Community Centre Society as additional insureds for the appropriate recreational or public events.
5. The Applicant will not permit liquor on the premises, unless prior approval has been granted by the Kelly Lake Community Centre Society and a valid liquor license is in effect, and a copy of the liquor license has been presented to the Peace River Regional District.
6. The Applicant is responsible for pick-up of litter and debris during and after the event and shall leave the Facility and surrounding areas in a clean, tidy and undamaged condition.
7. The Applicant (including friends or spectators using the facilities) is expected to act in a considerate and sportsmanlike manner. Abusive language or inconsiderate behavior which is found to be objectionable may result in the cancellation of your facility use.
8. The Peace River Regional District or the Kelly Lake Community Centre Society reserve the right to cancel or alter facility usage should conditions arise that necessitate scheduling changes.
9. The Peace River Regional District or the Kelly Lake Community Centre Society reserve the right to deny any rental application.
10. It is the responsibility of the Applicant to ensure the facilities are in good condition and free from hazards (glass, obstructions, etc). If a hazard does exist please notify the Kelly Lake Community Centre Society.

Waiver and Indemnity Clause

The Applicant accepts and will use the premises at its own risk and agrees that the Peace River Regional District and the Kelly Lake Community Centre Society has made no warranties or representations respecting the suitability or condition of the premises. The Applicant further agrees that it will indemnify and save harmless the Peace River Regional District and the Kelly Lake Community Centre Society, and their officers, employees, servants, agents, heirs, successors and assigns from and against any and all claims whatsoever, including all damages, liabilities, expense, costs, including legal or other fees, incurred in respect of any such claim(s) or any action(s) or proceeding(s) brought thereon arising directly or indirectly from or in connection with the granting of this agreement and use of the facility.

Applicant Signature

Date

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Appendix 'A'
FACILITY USE AGREEMENT

LOCATION: Kelly Lake Community Centre (the "Facility")

APPLICANT INFORMATION	
Organization:	Representative Name:
Email:	Phone:
Mailing Address:	
City:	Postal Code:
FACILITY USE INFORMATION	
Event/Program Name	No. of Participants:
Dates Requesting Use:	
Start Time:	End Time:
Provide a brief description of event/program:	
Map/Sketch of Location and Layout of Use (If applicable) ATTACHED <input type="checkbox"/> Yes	
Damage Deposit Paid: \$ _____	Date of Damage Deposit _____
INSURANCE & LICENSES	
Minimum \$2,000,000 Liability Insurance: Attached <input type="checkbox"/> Yes OR Not required <input type="checkbox"/>	
Insurance names Kelly Lake Community Centre Society & the Peace River Regional District as additional insureds? <input type="checkbox"/> Yes	
OR/ Reason not required:	
Party Alcohol Liability Insurance <input type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	
Insurance names Kelly Lake Community Centre Society & the Peace River Regional District as additional insureds? <input type="checkbox"/> Yes	
Special Occasion or Beer Garden Liquor License <input type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	
# of Individuals with Serving It Right <input type="checkbox"/>	# of Licensed First Aid Attendants On Site <input type="checkbox"/>
# of Individuals with Food Safe <input type="checkbox"/>	
Emergency Plan ATTACHED <input type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	Security Plan ATTACHED <input type="checkbox"/> Yes <input type="checkbox"/> Not Applicable

Applicant Signature _____

_____ Date

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Appendix 'A'
FACILITY USE AGREEMENT

RENTAL FEES

Effective June 1, 2017 – thereafter rental fees are to be determined by the Kelly Lake Community Centre Society and any changes to the fees below shall be approved in writing by the PRRD CAO.

Facility	Purpose of Event (example)	Fee	+ Damage Deposit
Gymnasium Use – private (does not include kitchen)	Youth, Birthday Party, family supper	\$50 per day	\$50
Gymnasium Use - commercial	Community meetings	\$150/event	\$250
Gymnasium	Sports Events	\$150/event	\$250
Kitchen Use	Dinners, cooking classes	\$100 per day	\$50
Classroom Use	Meetings, small groups, training	\$25/hr \$50/day	\$250
Classroom Use – personal	Meetings, etc	\$25/hr or \$50/day	\$250
Gymnasium &/or Full Facility Use	Weddings, large special events, community meetings	\$250 per day	\$1,000
Funerals and fundraisers	Community members – fees may be waived upon request to the Society	\$0.00	\$250

All costs for damages and repairs will be deducted from the damage deposit. The renter will be charged \$50 per hour for cleaning and removal of waste. The Kelly Lake Community Centre Society will provide the renter with an itemized list of fees upon return of damage deposit.