

**JOINT USE AGREEMENT
(Mar Jok Elementary School)**

**THIS JOINT USE AGREEMENT made as of the 1st day of July 2024
(the “Agreement”)**

BETWEEN:

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT
NO. 23 (CENTRAL OKANAGAN),
A CORPORATION UNDER THE *SCHOOL ACT*
1040 Hollywood Road South, Kelowna, British Columbia V1X 4N2
(the “Board”)**

AND:

**THE CITY OF WEST KELOWNA
3731 Old Okanagan Hwy,
West Kelowna, British Columbia, V4T 0G7
(hereinafter called the “City”)**

WHEREAS

- A. The Board is established under the British Columbia School Act, with responsibility for the design and delivery of an educational program for school-aged students resident within the Central Okanagan region.
- B. The Board is the registered owner of the lands located at the following address, and improvements thereon: Mar Jok Elementary School located at 2101 McDougall Road, West Kelowna, BC V1Z 4A4 (the "School").
- C. The Board and the City desire to use the Facilities, as herein after defined, for community use.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, the Board, and the City, in recognition of the capital dollars invested by the Board as approved by the Ministry of Education and Child Care through the Neighbourhood Learning Centre, and in recognition of the capital dollars invested by the City in the Rosewood Sports Field and Park, and in consideration of the covenants and agreements herein contained, agree as follows:

1.0 GENERAL

- 1.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successor and permitted assigns.
- 1.2 Notice given under this Agreement will be deemed to be sufficiently given if delivered to the other Party in writing.
- 1.3 This Agreement does not affect or limit the discretion, rights, duties, or powers of the parties under any statute, bylaw, or other enactment.
- 1.4 The whole agreement between the parties is set forth in this Agreement and no representations, warranties, or conditions, express or implied, have been made other than those expressed.
- 1.5 The parties must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 1.6 If any part of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, that part must be severed and the decision that it is invalid, illegal, or unenforceable must not affect the validity of the remainder of the Agreement.
- 1.7 Every reference to a party is deemed to include their successors, assigns, servants, employees, agents, contractors, officers, licensees, and invitees of such party wherever the context so requires or allows.
- 1.8 This Agreement is governed and construed in accordance with the laws of the Province of British Columbia.
- 1.9 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

2.0 PURPOSE

- 2.1 The purpose of this Agreement is to provide a framework within which members of the local community, the Board, the City, the general public, and students of the school can cooperate to maximize the development potential and use of educational and recreational facilities provided by the Board and the City.

3.0 DEFINITIONS

- 3.1 "**Facilities**" as defined in section 7.1.
- 3.2 "**Neighbourhood Learning Centre**" refers to space that promotes strong school-community partnerships that utilize school facilities to meet the needs of children, youth, families, and the greater community as described in Schedule B.
- 3.3 "**Operating Committee**" is a committee comprised of one member appointed by Board and one member appointed by City as defined in section 4.0.

- 3.4 **"Regular School Year"** as determined by the Board of Education in the annual school calendar.
- 3.5 **"Board Facilities"** as defined in section 7.2.
- 3.6 **"City Facilities"** as defined in section 7.3.
- 3.7 **"School Closures"** refers to the date and times the School is not operating any classes or professional development.
- 3.8 **"School Play Field"** refers to the upper playfield as shown in Schedule A.
- 3.9 **"Community Park Sports Field"** refers to the City owned sports field as shown in Schedule A.
- 3.10 **"License to Occupy Area"** as defined in section 18.1 and as shown in Schedule C.

4.0 OPERATING COMMITTEE

- 4.1 The Operating Committee shall be comprised of one representative appointed by the Board, and one representative appointed by the City.
- 4.2
 - (a) The mandate of the Operating Committee will be to consult and cooperate to develop and maintain an overall annual schedule of approved uses for the Facilities in order to assure maximum use of the Facilities that meet the needs of the Board, the City, local residents and the community at large. The Operating Committee shall work within established policy, guidelines, and operating authorities.
 - (b) The Operating Committee shall meet as required, to be determined by mutual agreement of the representatives. A record of any decision related to policy changes, operating authority including the provision of services shall be circulated in writing to each party's representative.
 - (c) The Operating Committee shall monitor the implementation of this Agreement and the participation of staff, students and public in the use of the Facilities. The Operating Committee shall recommend policy changes or operating authority guidelines to the Board and City for improved coordination of programs and the effective use of the Facilities consistent with the mandate of the Operating Committee.
 - (d) The Operating Committee shall recognize, and adhere to, the Board's requirement that the Board Facilities be available to the school, from 8:45 am to 2:30 pm during school days as well as for special events as scheduled by the School Principal and communicated with the City. The School Principal will give appropriate notice of any special events.
 - (e) The Operating Committee may negotiate temporary changes in use of each party's space with no changes to the operating costs set out herein. Temporary changes in the use of space will be set out in writing and agreed upon by both parties.
 - (f) The Operating Committee may authorize invoicing the City or Board for additional services, that may include but are not limited to custodial services, security

services, utilities and field costs as related to Board Facilities or field and park maintenance costs as related to City Facilities, as outlined in Clauses 7.2 and 7.3 below, or other matters as a result of the increased usage of the Facilities.

- (g) Any changes to the agreed upon schedule, by either the City or the Board, requires a minimum of 10 days' notice prior to the event date.
- (h) Annually, the Facilities will undergo a one-week maintenance shut-down, when required, on dates to be determined by the Operating Committee, in consultation with the Director of Operations of School District No. 23 (Central Okanagan).
- (i) Both parties recognize that vandalism above normal wear and tear may require immediate costing discussions and decisions for future operation.

5.0 TERM/RENEWAL

- 5.1 This Agreement shall be for a term of three (3) years commencing July 1, 2024, and terminating June 30, 2027, unless terminated by mutual agreement of both parties hereto.
- 5.2 If no renewal agreement is concluded at the expiration of this agreement and negotiations are continued, this Agreement shall remain in effect up to the time a subsequent agreement is reached.
- 5.3 This Agreement is subject to approval by the Board of Education of School District No. 23 (Central Okanagan) and the City of West Kelowna.
- 5.4 This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successor and permitted assigns.
- 5.5 This agreement will be reviewed annually by the Operating Committee.
- 5.6 This Agreement shall terminate and be at an end upon the following occurrences:
 - (a) Upon the end of the Term unless negotiations for renewal are in progress.
 - (b) If at the end of the Term, negotiations are continuing, then thirty (30) days after written notification, that negotiations have ceased.
 - (c) At any time for cause.
 - (d) Upon ninety (90) days' notice to the City given by the Board in the event that the School has been sold/leased/licensed or is being extensively renovated or is otherwise unavailable for use by the City.

6.0 SERVICE FEES

- 6.1 The Board agrees that annual costs relating to the operations and maintenance of the Facilities will be invoiced annually to the City. The service fees for July 1, 2024, to June 30, 2025, school year shall be no less than \$26,500 and service fees for July 1, 2025, to June 30, 2026, school year shall be no less than \$28,000 and service fees for July 1, 2026, to June 30, 2027, school year shall be no less than \$29,000. These costs are limited to

custodial services, security services, and utilities, and any increase resulting from additional services, security, and utilities required as necessary because of increased use by the City of the Facility. These service fees are inclusive of any costs incurred by the City to maintain City Facilities and License to Occupy areas.

- 6.2 The Board shall determine the level of service required for the custodial maintenance of the Facilities. Should the City require additional custodial service, or should the costs increase to the Board, the additional services and/or costs will be invoiced accordingly to the City for its account.

7.0 JOINT USE OF FACILITIES

- 7.1 For the purpose of this Agreement, the Board Facilities and the City Facilities shall be collectively called the "Facility/Facilities".
- 7.2 For the purpose of this Agreement, the "Board Facilities" shall include the following components as shown on Schedules "A" and "B":
- (a) The gymnasium including change rooms, washrooms, and storage area.
 - (b) The Neighbourhood Learning Centre space including an exterior washroom.
 - (c) The school's play field.
- 7.3 For the purpose of this Agreement, the "City Facilities" shall include the following component as shown on Schedule "A and B":
- (d) Community sports field adjacent to the Mar Jok Elementary School.
- 7.4 For the purpose of this Agreement, the Board agrees that the City shall have first right of access to the Board Facilities, except for events as may be scheduled by the School Principal and communicated with the City and will give appropriate notice of any special events, as set out in Clause 7.2 as follows:
- (e) From 2:30 p.m. to 10:00 p.m. on weekdays during the Regular School Year. Access may be granted earlier if mutually agreed by the Board and the City.
 - (f) From 8:00 a.m. to 10:00 p.m. on Saturdays, Sundays, and during School Closures throughout the calendar year, unless mutually agreed by the Board and the City.
 - (g) From 8:00 a.m. to 10:00 p.m. on weekdays during the school holiday periods, subject to maintenance and security requirements.
- 7.5 For the purpose of this Agreement, the City agrees that the Board shall have first right of access to the City Facilities as set out in Clause 7.3 as follows, provided however that the Board shall be able to utilize the City Facilities when not used by the City:
- (h) From 8:00 a.m. to 2:30 p.m. on weekdays in the regular school year.
- 7.6 The number of hours available to the school for the community sports field mentioned above will be based on availability and field maintenance protocols.

8.0 EQUIPMENT AND MATERIALS

- 8.1 For the purpose of this Agreement, both parties acknowledge that each are responsible

for the purchase and maintenance of their own equipment.

- 8.2 The Board and the City agree that each party may use the other party's equipment, provided that authorized permissions have been granted by the Operating Committee. The party using the equipment shall be responsible for all liability and costs, including any repair or replacement associated with the use of the other party's equipment. The Operating Committee is to develop and maintain a list of equipment that can be shared by both parties.
- 8.3 Both parties recognize that future expansion and/or purchase of equipment may benefit both parties and, as a result, cost sharing agreements between the City and the Board for these expenses may be factored into an annual transfer of money.

9.0 ADMINISTRATIVE RESPONSIBILITY

- 9.1 The use and operation of the Facilities shall be subject to the policies, regulations, and conditions of the Board and City respectively. Policies, regulations, and conditions are subject to be reviewed from time to time.
- 9.2 The Board will ensure that the activities under this Joint Use Agreement are not in conflict with the collective agreement with the Central Okanagan Teachers' Association (COTA) and with the Canadian Union of Public Employees (CUPE) Local 3523.
- 9.3 The City and the Board will ensure that activities under this Joint Use Agreement are appropriate for an elementary school environment. Either the Board or the City can veto the use of the Facilities for any activity that they deem inappropriate for an elementary school environment, whether during school hours or after school hours.
- 9.4 The City acknowledges that the City Facilities are adjacent to the Board Facilities and the Board acknowledges that the Board Facilities are adjacent to the City Facilities. As such, each party will make all reasonable efforts to ensure that the scheduled activities do not interfere with the operations and safe use of the other party's facilities.

10.0 SCHEDULING TIME AVAILABILITY

- 10.1 Priority for scheduling shall be given as per Section 7.0 of this agreement unless agreed to otherwise by the Operating Committee.
- 10.2 The Board shall provide the City with a draft calendar of special events for the upcoming school year annually, subject always to special events and circumstances that might arise as determined and scheduled by the School Principal and communicated with the City. The School Principal will give appropriate notice of any special events.
- 10.3 Any changes to the agreed upon space allocation by either the City or the Board require a minimum of 10 days' notice prior to the event date, unless mutually agreed upon by both parties, or as required by the School Principal and mutually agreed to by both parties.

11.0 RENTAL OF FACILITIES

- 11.1 The Board Facilities may be rented to third parties only by the Board, regulated by Board Policy on the Board's Rental Agreement. All rental revenue generated by the Board will remain with the Board.
- 11.2 The City Facilities shall be rented to third parties only by the City on the City Rental Agreement. All rental revenue generated by the City will remain with the City.
- 11.3 All rentals and bookings must be considered appropriate for an elementary school environment.
- 11.4 Any agreements for use of the Facilities by any third party shall require such third party to obtain commercial liability insurance as specified in the Board's rental agreement and such agreement shall also specify that the third party shall indemnify the Board, its elected officials, officers, employees and agents from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the rental or other use of the specific Facilities included in the agreement.

12.0 CUSTODIAL SERVICES

- 12.1 The Board and City shall determine the level of service (i.e., the number of hours) required for the custodial maintenance of each of their Facilities. The Operating Committee will review the level of service annually. Custodial services will be maintained to a standard as established by the Board.
- 12.2 Additional custodial maintenance costs shall be recommended by the Operating Committee and billed as incurred.

13.0 INSURANCE/ LIABILITY/ SECURITY

- 13.1 The Board agrees that the use of the City-owned land and Facilities thereon, will be at its own risk and the Board agrees to indemnify and save harmless the City from and against all actions, costs, claims and demands of every kind, description or nature arising out of or in any way connected with such use, including claims arising pursuant to the Occupiers' Liability Act, except where any such actions, costs, claims and demands arise from the negligent acts or omissions of the City or those for whom it is in law responsible.
- 13.2 The City agrees that the use of the Board-owned lands and Facilities thereon, will be at its own risk and the City agrees to indemnify and save harmless the Board from and against all actions, costs, claims and demands of every kind, description or nature arising out of or in any way connected with such use, including claims arising pursuant to the Occupiers Liability Act, except where any such actions, costs, claims and demands arise from the negligent acts of omissions of the Board or those for whom it is in law responsible.

- 13.3 The City and the Board, subject to limitations placed on the Board by the Ministry of Education and Child Care, further agree that each party shall maintain comprehensive general liability insurance for their lands and the Facilities thereon, in an amount and form that is common and prudent to their respective activities.
- 13.4 Any agreements for use of the Facilities by any third party shall require such third party to obtain comprehensive general liability insurance as specified in the rental agreement and such insurance shall name the City, and the Board as the case may be, as Additional Insured. Such agreement shall also specify that the third party shall indemnify the City, its elected officials, officers, employees and agents and the Board, its officers, employees and agents from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the rental or other use of the specific Facilities included in the agreement.
- 13.5 The security provisions established by the Board or by the City from time to time with respect to their respective Facilities shall be set out in the Rental Agreement and shall be strictly enforced and adhered to by all parties using those Facilities.

14.0 RESOLUTION OF DISPUTES

- 14.1 The Operating Committee shall mediate problems and concerns related to the use of the Facilities and the terms of this Agreement. In the event the Operating Committee is unable to recommend a resolution of any dispute, they shall refer the matter to the City and Board, who shall appoint representatives to meet to resolve the matter. If they fail to come to a resolution within 15 days, the Board and the City shall agree upon a professional mediator in a final attempt to resolve any disputes.

15.0 SMOKING, VAPING, CANNABIS, TOBACCO, AND ALCOHOL

- 15.1 The Operating Committee shall require that all Policies and Bylaws of the Board and of the City with respect to smoking, vaping and tobacco use and consumption of alcohol in or on the Facilities are adhered to. Such activities are against certain Provincial Laws and City Bylaws.
- 15.2 For clarity, the Board has zero tolerance for smoking, vaping, tobacco use, cannabis use or consumption and consumption of alcohol in or on or at any of the Facilities.

16.0 DISPOSITION OF INTEREST

- 16.1 Neither party shall dispose of its interest in this Agreement or any renewal thereof or assign without the prior written consent of the other party except as permitted by the Board to third parties for rental or license for use as set out herein. The City shall not assign or license any of its rights hereunder.

17.0 EARLIER TERMINATION

- 17.1 Notwithstanding anything herein contained, the City may terminate this Agreement upon providing the Board with at least three (3) months' written notice of such

termination.

- 17.2 Notwithstanding anything herein contained, the Board may terminate this Agreement upon providing the City with at least three (3) months' written notice of such termination.

18.0 LICENSE TO OCCUPY

18.1 Premises

That those lands, more particularly known and described as follows:

Restricted to the area described in Schedule C - Lot 35, DL 503 PL KAP73555, ODYD, except Plan EPP27929.

18.2 City Covenants

- (a) Maintenance of Premises: At its own expense to maintain and keep the Premises in good order and condition and promptly make all needed repairs and replacements and to keep the Premises clean as reasonably required by the Board;
- (b) Condition of Premises: To keep the Premises and every part thereof in a clean and tidy condition and not to permit waste paper, garbage, ashes or waste of objectionable material to accumulate thereon, and at its own expense, to keep the grounds, sidewalks and curbs upon the area clean and free of snow and ice.
- (c) Repair: To repair any structures and services, including reasonable wear and tear, and to permit the Board to enter and view the state of repair and to repair according to notice in writing as required by this clause, and to leave in good repair, reasonable wear and tear excepted.
- (d) Assigning or Subletting: Not to assign, sublet or part with possession of any part of the Premises without leave of the Board, which leave may be arbitrarily withheld.
- (e) Rules and Regulations: That the City and its employees and all persons visiting or doing business with them on the Premises shall be bound by and will observe and perform any rules and regulations attached to this agreement and any further reasonable rules and regulations made hereafter by the Board of which notice in writing shall be given to the City and that all such rules and regulations shall be deemed to be incorporated in and form part of this agreement.
- (f) Observance of Law: In use and occupation of the Premises, not to violate any law or ordinance or any order, rule, regulation or requirement of any federal, provincial or municipal government and any appropriate department, commission, board or officer thereof.
- (g) Waste and Nuisance: Not to do or suffer any waste or damage, disfiguration or injury to the Premises; and not to use or permit the use of any part of the Premises for any dangerous, noxious or offensive trade or business and not to cause or maintain any nuisance on the Premises.

- (h) Entry by Board: To permit the Board or its agents to enter the Premises at any time and from time to time for the purpose of inspecting and of making repairs to the Premises as agreed to in the terms of this agreement.
- (i) Installations: Not to make or erect in or on the Premises any installation, alteration, addition, or partition without submitting plans and specifications to the Board and obtaining the Board's prior written consent.
- (j) Signs: Not to paint, display, inscribe or affix any other signage, picture, advertisement, notice, lettering or direction on any part of the outside of the structures or on the Premises without the prior consent of the Board.

18.3 Board Covenants

- (a) Access: to permit the City, its employees and all persons lawfully to use the Premises access, in accordance with this agreement.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement by their duly authorized signing officers on the day and year first above written.

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 23 (CENTRAL OKANAGAN)



Delta Carmichael, CPA, CA
Secretary-Treasurer/CFO
School District No.23 (Central Okanagan)

June 13, 2024

Date

CITY OF WEST KELOWNA

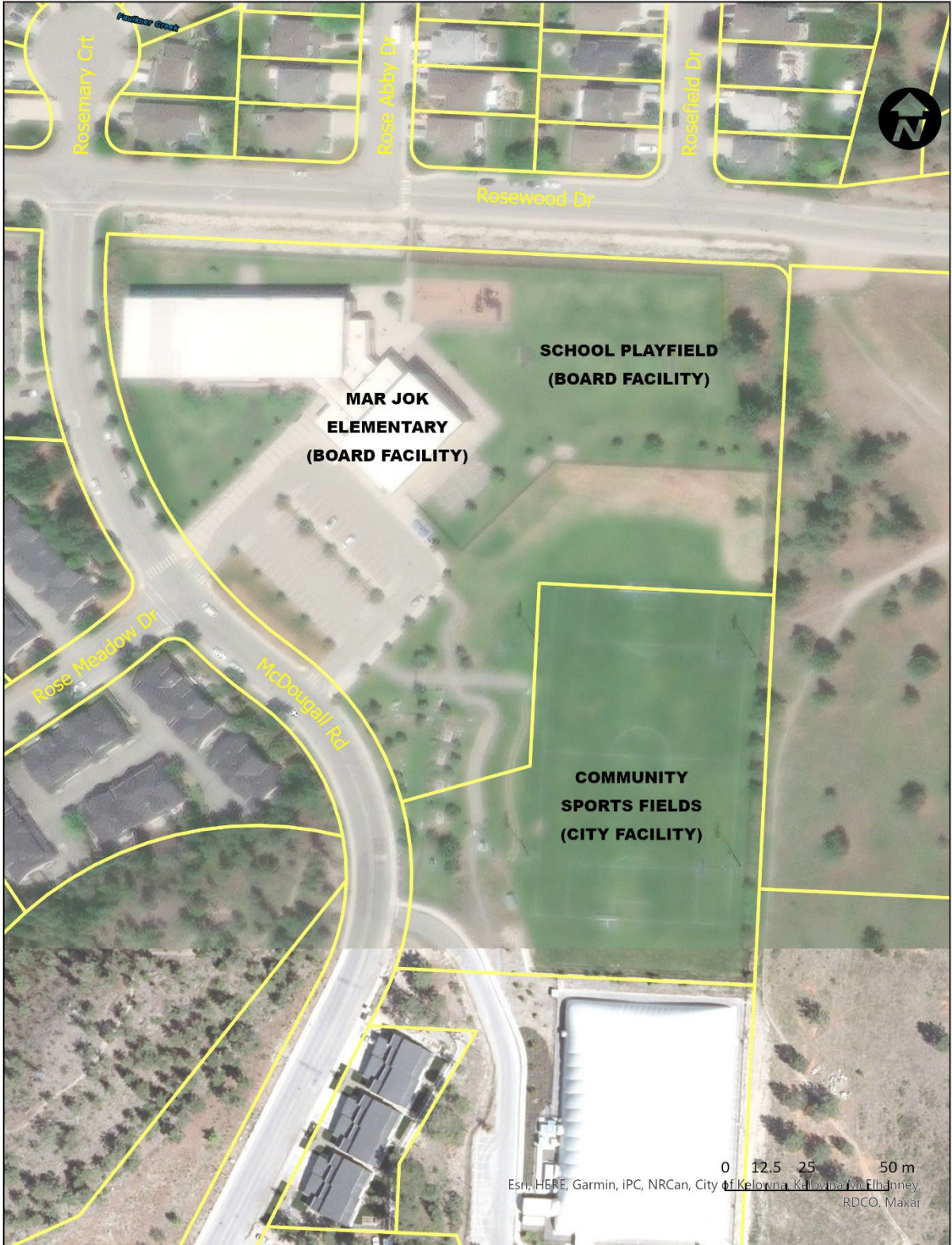
Gord Milsom
Mayor
City of West Kelowna

Date

Corinne Boback
Corporate Officer
City of West Kelowna

Date

Schedule A – Property Site Map



Schedule B – Facility Space Breakdown Neighbourhood Learning Centre

