

**CITY OF HOMER EDUCATION RECREATION CENTER**  
**Waiver and Release of Liability, Assumption**  
**Of Risk, Defense and Indemnification, and Covenant Not To Sue Agreement**

**NOTE:** Please read this form carefully and be aware that in utilizing the City of Homer Education Recreation Center (“HERC”), **you are expressly assuming the risk and legal liability and releasing all claims of injuries, damages, or loss**, which you or your minor child(ren), might sustain as a result of participating in any and all activities or programs associated with the HERC. By signing this Agreement, you as an adult, or as a parent or legal guardian of a minor, are acknowledging that you are aware of the risks associated with use the HERC and that you are freely assuming those risks.

In exchange for the City of Homer (“City”) operating the HERC, providing staff members, and permitting my entry and/or use of the HERC, I agree as follows:

**I. RECITALS.**

1. “HERC” means the City of Homer Education and Recreation Center, located at 500 Sterling Highway, Homer, AK, and includes a two-story structure consisting of three distinct spaces (a lower level gymnasium wing, an upper level classroom wing, and a center two-story space that connects the two wings) and encompasses 4.3 acres.
2. “Activities” means use of the HERC’s fitness facility, equipment, fitness programs, classrooms, sports programs, recreation programs, education classes, sports clubs, gaming, and all other classes and events offered at the HERC.
3. “City” means the City of Homer, Alaska and its employees, officials, officers, agents, directors, administrators, staff members, volunteers, subsidiaries, successors, representatives, attorneys, independent contractors, and all other related persons and associated organizations.
4. “Claims, suits, and actions” will be construed liberally to mean any and all actions, accounts, bonds, causes of action, charges, claims, contracts, damages, demands, executions, expenses, indemnities, liabilities, losses, penalties, proceedings, and suits of any nature.
5. “Risk” means personal property damage or loss, **illness, personal injury, including physical, mental, or emotional injury, bodily injury, serious bodily injury, disfigurement, temporary or permanent disability, paralysis, and death**, even if such damages, injuries, or death are alleged to be in whole or in part, directly or indirectly, the fault of or caused by the negligence or carelessness or other wrongful acts or omissions of the City, including, without limitation, claims arising out of the dangerous condition of City property, the negligence or other wrongful acts or omissions of City or its employees, officials, officers, agents, directors, administrators, staff members, volunteers, subsidiaries, successors, representatives, attorneys, independent contractors, or a COVID-19 infection arising before, during, or after accessing the HERC.

**I. RISK ACKNOWLEDGMENT. I ACKNOWLEDGE AND AGREE ON BEHALF OF MYSELF AND/OR MY CHILDREN:**

1. I hereby acknowledge that I understand the nature of the HERC, and believe that I am, and/or my child(ren) are, qualified and in proper physical condition to utilize the HERC. I further agree that if at any time, I believe using the HERC is unsafe with respect to my or my child(ren)'s physical condition, the equipment, or facilities, it shall be my responsibility to immediately discontinue use of the HERC.
2. I understand the use of the HERC facility and participation in the Activities involves certain Risks, both known and unanticipated, which could result in **ILLNESS, PERSONAL INJURY, INCLUDING PHYSICAL, MENTAL, AND EMOTIONAL INJURY, BODILY INJURY, SUBSTANTIAL BODILY INJURY, DISFIGUREMENT, TEMPORARY OR PERMANENT DISABILITY, PARALYSIS, OR DEATH TO MYSELF OR MY CHILD(REN)** or loss or damage to my property.
3. I acknowledge that novel coronavirus ("COVID-19") infections have been confirmed throughout the United States, including in Homer, Alaska. If I, my child(ren), or anyone in our household: (i) experiences symptoms of COVID-19, including without limitation, fever of 100°F or greater, cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat, congestion, and/or new loss of taste or smell; (ii) has a suspected or diagnosed/confirmed case of COVID-19; or (iii) has had known contact with a suspected or diagnosed/confirmed case of COVID-19 that we will not utilize the HERC. I acknowledge and agree that the City may revise its procedures at any time in accordance with guidance and protocols issued by the Centers for Disease Control and Prevention and/or the Alaska Department of Health and Human Services for slowing the transmission of COVID-19, including the participation restrictions set forth above, and further agree to comply with the City's procedures at all times while using the HERC. I further acknowledge and agree that, due to the nature of HERC activities, social distancing of 6 feet per person may not be possible. I fully understand and appreciate both the known and potential dangers of utilizing the HERC and acknowledge that such use may, despite the City's reasonable efforts to mitigate such dangers, result in exposure to COVID-19, which could result in quarantine requirements, serious illness, disability, and/or death.
4. I understand that use of the HERC facilities or participating in an Activity has unknown Risks. These Risks may be caused by my own actions or inactions, by the actions or inactions of third-parties, by the condition of the HERC property, its facility, its equipment, and/or due to the negligence or other wrongful acts or omissions of the City of Homer or its employees, officials, officers, agents, directors, administrators, staff members, volunteers, subsidiaries, successors, representatives, attorneys, independent contractors, and all other related persons and associated organizations.
5. I understand there are **OTHER RISKS AND SOCIAL AND ECONOMIC LOSSES** either not known to me or not readily foreseeable at this time, and I **ACCEPT AND ASSUME**

ALL SUCH RISKS AND ALL RESPONSIBILITY FOR LOSSES, COSTS, AND DAMAGES I incur to the extent permitted by law as a result.

**II. WAIVER AND RELEASE OF LIABILITY, ASSUMPTION OF RISK, DEFENSE AND INDEMNIFICATION, AND COVENANT NOT TO SUE AGREEMENT.** In exchange for the use of the HERC facility or participation in its Activities, I, for myself, my child(ren), my personal representatives, heirs, executors, assigns, and next of kin, HEREBY UNCONDITIONALLY WAIVE, RELEASE, DISCHARGE, AND COVENANT NOT TO SUE AND DEFEND AND INDEMNIFY the CITY OF HOMER or its employees, officials, officers, agents, directors, administrators, staff members, volunteers, subsidiaries, successors, representatives, attorneys, independent contractors, and all other related persons and associated organizations from all liability, claims, suits, actions, demands, losses, for damages arising out of my or my child(ren)'s use of the HERC facility or participation in its Activities.

**III. INDEMNIFICATION, HOLD HARMLESS, AND DUTY TO DEFEND.** I agree to INDEMNIFY, HOLD HARMLESS, and DEFEND THE CITY, its employees, officials, officers, agents, directors, administrators, staff members, volunteers, subsidiaries, successors, representatives, attorneys, independent contractors, and all other related persons and associated organizations from any and all claims, actions, suits, procedures, costs, expenses, damages, and liabilities, including attorneys' fees, as a result of my use of the HERC or participation in any Activities, and to reimburse them for such expenses incurred. My agreement to INDEMNIFY, HOLD HARMLESS, and DEFEND extends to my children, my personal representatives, heirs, executors, assigns, and next of kin.

**IV. EFFECT OF THIS AGREEMENT.**

1. By freely and voluntarily entering into this release, I acknowledge that I have given up legal rights and/or possible claims, which I might otherwise assert or maintain against the City or its employees, officials, officers, agents, directors, administrators, staff members, volunteers, subsidiaries, successors, representatives, attorneys, independent contractors, and all other related persons and associated organizations, including but not limited to, claims, suits, and actions, resulting from or related to any, and all, negligent or wrongful acts and omissions by the City. I further agree to defend the City from any such claims. The terms of this release are contractual and not a mere recital.
2. I, for myself, my child(ren), and my personal representatives, heirs, executors, assigns, and next of kin agree to waive and release liability, assumption of risk, defense and indemnification, and covenant not to sue the Releasees from and against all claims for personal injury, death, damage or loss to property, liability or expense, including attorney's fees, arising out of the below-named participant's use of the Community Center, notwithstanding any possible negligence, (whether sole, concurrent or otherwise) or other wrongful acts or omissions on the part of the Releasees.

**V. SEVERABILITY.** I expressly agree that the foregoing waiver and release of liability, assumption of risk, defense and indemnification, and covenant not to sue agreement is

intended to be as broad and inclusive as permitted by the law of the State of Alaska and that if any portion thereof is held invalid it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

**VI. ACKNOWLEDGEMENT OF UNDERSTANDING.** I have read this waiver of liability, assumption of risk, defense and indemnification agreement, and covenant not to sue agreement, and I understand its terms, also I understand that I am giving up substantial rights, including my right to sue. I acknowledge that I am signing this agreement freely and voluntarily and intend my signature to be a complete and unconditional release of liability to the greatest extent allowed by law.

**READ BEFORE SIGNING**

**I certify that I have read and understood this Waiver and Release of Liability, Assumption of Risk, Defend and Indemnification, and Covenant Not to Sue Agreement and in consideration of your accepting my entry into the HERC and participation in HERC Activities or Programs, I, for myself and my child(ren) and anyone entitled to act on my behalf, waive and forever release and discharge the City of Homer, its employees, officials, officers, agents, directors, administrators, staff members, volunteers, subsidiaries, successors, representatives, attorneys, independent contractors, and all other related persons and associated organizations from negligence claims, suits, or actions arising out of my participation in (or as a spectator of) any program, class, or use of HERC.**

Participant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Parent's/Legal Guardian's signature if under 18 years of age:** I represent that I have legal capacity and authority to act on behalf of the minor named herein.

Parent/Guardian Name: \_\_\_\_\_

Parent/Guardian Signature: \_\_\_\_\_

Date: \_\_\_\_\_