

**CITY OF HOMER COMMUNITY RECREATION
AND
KENAI PENINSULA BOROUGH
Waiver and Release of Liability, Assumption
of Risk, Covenant not to Sue and Defense and Indemnification Agreement**

NOTE: This form must be read and signed before participating in or observing any activity sponsored by the City of Homer Community Recreation Programs (“Community Recreation”) held on Kenai Peninsula Borough (“Borough”) facilities. **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 or observing any and all associated activities or programs. 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 the activities and you are freely assuming those risks.

In consideration of the City permitting my entry and participation into the Community Recreation’s Activities at the Borough facilities and for the use of these facilities, equipment, programs, and classes, or the observation thereof, I hereby agree to the following:

I. RECITALS.

1. “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.
2. “Borough” means the Kenai Peninsula Borough, the Kenai Peninsula Borough School District (“KPBSD”) and their officers, board members, directors, administrators, employees, agents, insurers, sureties, attorneys, officials, officers, staff members, volunteers, subsidiaries, successors, representatives, attorneys, independent contractors, and all other related persons and associated organizations.
3. “Activities” means any City sponsored events, programs, or classes, at the Borough’s facilities, including but not limited to: (1) athletic, artistic, adventure, and/or sporting activities, (2) afterschool programs, (3) camps, (4) instructional classes or lessons, (5) gaming, and (6) cultural events.
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 or the Borough, including, without limitation, claims arising out of the dangerous condition of the City or the Borough’s facilities, premises, or equipment, or other wrongful acts or omissions of the City or the Borough or their 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 visiting a Borough facility or participating in a City sponsored Activity.

II. RISK ACKNOWLEDGMENT.

I ACKNOWLEDGE AND AGREE ON BEHALF OF MYSELF OR MY CHILD(REN) OR ON BEHALF OF MYSELF AND MY CHILD(REN):

1. I hereby acknowledge that I understand the nature of Community Recreation sponsored Activities, and believe that I am, and/or my child(ren) are, qualified and in proper physical condition to utilize Community Recreation. I further agree that if at any time, I believe participation 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 participating.
2. I understand that use of Community Recreation’s or the Borough’s equipment, participation in Community Recreation sponsored Activities, and entry or use of the Borough’s property or facilities related thereto involves certain Risks, both known and unanticipated, which could result in **ILLNESS (including COVID-19), PERSONAL INJURY, INCLUDING MENTAL AND EMOTIONAL INJURIES, BODILY INJURY, SUBSTANTIAL BODILY INJURY, DISFIGUREMENT, PERMANENT DISABILITY, PARALYSIS, OR DEATH TO MYSELF OR MINOR CHILD** or damage or loss of personal 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, or new loss of taste or smell; (ii) has a suspected or

{01259092}

HERC/KPBSD WAIVER

Page 2 of 6

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 Community Recreation sponsored Activities or enter the Borough's facilities. I acknowledge and agree that the City or the Borough may revise its procedures at any time in accordance with guidance and protocols issued by the Centers for Disease Control and Prevention, the Alaska Department of Health and Human Services, or the KPBSD 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 Community Recreation sponsored Activities at the Borough's facilities. I further acknowledge and agree that, due to the nature of Community Recreation sponsored 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 Community Recreation sponsored Activities and acknowledge that such use may, despite the City and the Borough's reasonable efforts to mitigate such dangers, result in exposure to COVID-19, which could result in quarantine requirements, serious illness, disability, and even death.

4. I understand that use of Community Recreation's or the Borough's equipment, participating or engaging in Community Recreation sponsored Activities, or entry or use of the Borough facilities related thereto have 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 Community Recreation's or the Borough's equipment, the condition of the Borough's property or facilities, the way in which Community Recreation sponsored Activities take place, or due to the negligence of the City or the Borough.
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.

III. WAIVER AND RELEASE OF LIABILITY, ASSUMPTION OF RISK, DEFENSE AND INDEMNIFICATION, AND COVENANT NOT TO SUE AGREEMENT.

In exchange for the use of Community Recreation or participation in its Activities, and for entry onto the Borough's property, 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 and the KENAI PENINSULA BOROUGH and their employees, officials, officers, agents, directors, administrators, staff members, volunteers, subsidiaries, successors,

{01259092}

HERC/KPBSD WAIVER

Page 3 of 6

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 Borough's facilities or participation in Community Recreation Activities.

IV. INDEMNIFICATION, HOLD HARMLESS, AND DUTY TO DEFEND.

1. I agree to INDEMNIFY, HOLD HARMLESS, and DEFEND THE CITY OF HOMER, its City Council members, the Mayor, 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 Community Recreation's or Borough's equipment, or participation in any Community Recreation sponsored Activities at or on Borough property 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.
2. I agree to INDEMNIFY, HOLD HARMLESS, and DEFEND THE KENAI PENINSULA BOROUGH AND KENAI PENINSULA BOROUGH SCHOOL DISTRICT (Homer High School, Homer, Middle School and West Homer Elementary) and its School Board Members, Superintendent, employees, officials, officers, agents, directors, administrators, board members, 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 Community Recreation's or the Borough's equipment, or participation in any Community Recreation sponsored Activities at or on Borough property 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.

V. EFFECT OF THIS AGREEMENT.

1. By freely and voluntarily entering into this release, I acknowledge that I have given up legal rights and possible claims, which I might otherwise assert or maintain against the City, including but not limited to, claims, suits, and actions, resulting from or related to any, and all, negligent ,or any other wrongful acts and omissions by the City. I further agree to waiver and release of liability, assumption of risk,

covenant not to sue and defend and indemnify the City from any and all claims. The terms of this release are contractual and not a mere recital.

2. I, for myself, my child(ren), and my personal representatives, agree to defend, indemnify and hold the City harmless from and against all claims for personal injury, death, damage or loss to property, liability or expense, including attorney's fees and costs, arising out of the below-named participant's participation in City sponsored Activities or use of the City's equipment notwithstanding any possible negligence or other wrongful act on the part of the City.
3. By freely and voluntarily entering into this release, I acknowledge that I have given up legal rights and possible claims, which I might otherwise assert or maintain against the Borough, including but not limited to, claims, suits, and actions, resulting from or related to any, and all, negligent or other wrongful acts and omissions by the Borough. I further agree to waive and release liability, assumption of risk, covenant not to sue and defend and indemnify the Borough from any and all claims. The terms of this release are contractual and not a mere recital.
4. I, for myself, my child(ren), and my personal representatives, agree to defend, indemnify and hold the Borough harmless from and against any and all claims for personal injury, death, damage or loss to property, liability or expense, including attorney's fees and costs, arising out of the below-named participant's presence on the Borough's property or use of the Borough's property notwithstanding any possible negligence or other wrongful acts and omissions on the part of the Borough.

VI. SEVERABILITY.

I expressly agree that the foregoing waiver and release of liability, assumption of risks, covenant not to sue and indemnity 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.

VII. ACKNOWLEDGEMENT OF UNDERSTANDING.

I have read this waiver and release of liability, assumption of risk, covenant not to sue and defense and indemnity 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 THIS DOCUMENT AND I FULLY UNDERSTAND ITS CONTENT. I AM AWARE THAT THIS IS A WAIVER AND RELEASE OF LIABILITY, ASSUMPTION OF RISK, COVENANT NOT TO SUE, AND DEFENSE AND INDEMNIFICATION AGREEMENT AND I SIGN IT OF MY OWN FREE WILL.

Participant's Name: _____

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: _____