

**FIFTH AMENDMENT TO FACILITY USE AGREEMENT  
BETWEEN CARMEL UNIFIED SCHOOL DISTRICT  
AND MEARTH, INC.**

This Fifth Amendment to Facility Use Agreement between Carmel Unified School District and MEarth, Inc. ("Fifth Amendment") is made and entered into by and between Carmel Unified School District ("District") and MEarth, Inc. ("MEarth" and collectively with District, the "Parties"), this 1st day of July, 2020 ("Effective Date"), based upon the following:

**RECITALS**

**WHEREAS**, the Parties previously entered into that certain Facility Use Agreement between Carmel Unified School District and MEarth, Inc. ("Agreement") for MEarth's use of the Carmel Middle School Habitat and School Gardens ("Habitat Garden" or "District Facilities") with a term commencing on October 1, 2014 and ending on June 30, 2017; and

**WHEREAS**, the Parties have previously entered into (1) that certain Amendment to Facility Use Agreement ("First Amendment"), extending the term of the Agreement through September 30, 2017, (2) that certain Second Amendment to Facility Use Agreement ("Second Amendment") further extending the term of the Agreement to August 30, 2018, (3) that certain Third Amendment to Facility Use Agreement further extending the term of the Agreement until August 30, 2019, and (4) that certain Fourth Amendment to Facility Use Agreement extending the term of the Agreement until June 30, 2020; and

**WHEREAS**, the Parties now wish to further modify and amend the Agreement effective upon the execution of this Fifth Amendment; and

**WHEREAS**, the modifications stated herein below reflect the true intent of the Parties.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties mutually agree as follows:

**FIFTH AMENDMENT TO AGREEMENT**

1. Except as set forth in this Fifth Amendment, all other provisions of the Agreement and any amendments thereto shall remain in full force and effect.
2. Section 1 (Term) of the Agreement is removed in its entirety and replaced with the following:
  1. Term. The term of this Agreement ("Term") shall extend until September 9, 2020, unless earlier terminated as provided therein or by execution by both Parties of an agreement that supersedes this Agreement. There shall be no extension of the Term without the mutual written consent of the District and MEarth.
3. Section 2 (Required Documentation) of the Agreement is removed in its entirety and replaced with the following:
  2. Development of Business Plan; Required Documentation.

- a. *Development of Business Plan.* By no later than August 19, 2020, MEarth agrees to provide a TBD date acceptable to both parties to submit to the District a written business plan ("Business Plan"), with the intent of achieving fiscal sustainability and programmatic self-sufficiency. The Business Plan shall include, at a minimum: projected revenues and expenditures for the current fiscal year and for two subsequent fiscal years; a timeline and specific goals for achieving fiscal sustainability and programmatic self-sufficiency; a detailed narrative supporting projected revenues and expenditures including salary and benefits for professional staff, and hourly rates and benefits for support staff, goals and timelines for self-sufficiency; and any other financial information necessary to support the Business Plan. Satisfaction of this condition shall not be deemed complete unless and until the Business Plan submitted by MEarth is approved by the District's Governing Board. Until such approval by the District's Governing Board, MEarth shall not publish, post, or release the Business Plan to anyone outside of the MEarth organization. Following approval of the of the Business Plan by the District's Governing Board, the Parties shall meet, on a mutually-agreed upon schedule, to discuss the content and implementation of the Business Plan and its effect on the ongoing financial relationship of the Parties.

4. Section 4 (Monthly Use Fees) of the Agreement is removed in its entirety and replaced with the following:

4. Waiver of Monthly Use Fee. Commencing on July 1, 2020, the monthly use fee shall be waived during the months of July, August and September, 2020. The District reserves the right to require MEarth's payment of a Monthly Use Fee in any future amendment or agreement for the use of the District Facilities.
5. MEarth will perform the services set forth in the MEarth Property Matrix (Exhibit A) throughout the term of the Agreement.
6. District will pay MEarth \$2,860 each month for Property Management Services for the months of July and August 2020.

5. The first paragraph of Section 6 (Events) of the Agreement is revised to read as follows:

6. Events. MEarth may also use District Facilities for "Events," which term refers herein to any occasion at which members of the public, including non-District students, are invited to attend. All Events must be pre-scheduled, utilizing the District's Facilitron online facilities reservation system. The Parties may from time to time meet and confer to coordinate the schedule for use of the District Facilities; however, the District shall have first priority for use of District Facilities. The District reserves the right to revoke permission for any use of the District Facilities for any reason and at any time.

In the conduct of all activities at District Facilities, including but not limited to activities such as summer camp and other activities serving minor children, MEarth shall comply with all county and state health public orders then in effect. Summer camp and other activities provided for minor children during 2020 shall only be conducted in compliance with the Safe Guide for Reopening Schools prepared by the California Department of Education, to the maximum extent that such guide can be applied to the activities offered

by MEarth. Measures for such activities shall include, but not be limited to, frequent hand washing for all participants, access to hand sanitizing lotion, use of face masks where appropriate or required, and safe social distancing.

6. As a condition to the execution of this Fifth Amendment, MEarth shall provide evidence that the District is listed as an additional insured on all relevant insurance policies, and that MEarth is in compliance with the insurance requirements of the Agreement.
7. For the remaining Term of the Agreement, MEarth shall have access to the District's background check software system (Raptor) for its employees and contractors at no charge. Equipment and software will be provided by the District, an operating savings to MEarth of approximately \$1,600.
8. This Fifth Amendment supersedes any conflicting provisions in the Agreement or other amendments thereto, and any ambiguity between this Fifth Amendment and the Agreement or any other amendments thereto is to be interpreted in accordance with this Fifth Amendment.
9. This Fifth Amendment may be executed in counterparts, each of which shall constitute an original of this Fifth Amendment. Facsimile signature pages transmitted to other Parties to this Fifth Amendment shall be deemed equivalent to original signatures on counterparts.
10. This Fifth Amendment shall be effective upon execution by the Parties and ratification or approval by the District's Governing Board.

**IN WITNESS WHEREOF**, the Parties have, by their duly authorized representatives, executed this Fifth Amendment:

**CARMEL UNIFIED SCHOOL DISTRICT**

**MEARTH, INC.**

BY: \_\_\_\_\_

BY:  \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: Executive Director

DATE: \_\_\_\_\_

DATE: 6/20/2020