

MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is effective as of the ___ day of _____, 2018 and is entered into by and between **City of Santa Rosa** (“City”), having an office at 100 Santa Rosa Avenue, Santa Rosa, CA 95404 and **Sonoma County** (“County”), having an office at 2300 County Center Dr., Suite 220 B, Santa Rosa, CA 95403 and **OnSolve LLC.**, a Delaware Limited Liability Company, having an office at 780 West Granada Blvd., Ormond Beach, FL 32174. For purposes of this Agreement, the party disclosing the Confidential Information (as that term is defined below) shall be referred to as the “Disclosing Party” and the party receiving the Confidential Information shall be referred to as the “Receiving Party.”

The parties agree as follows:

1. **Background:** The County is the lead agency for disaster planning for the Sonoma County Operational Area and maintains and activates the countywide emergency notification and warning system, known as SoCoAlert. To that end the County contracted with OnSolve LLC. to use its product CodeRED to notify the public about imminent life safety threats. On 10/21/16, the County entered into an MOU that allowed the City access to the SoCoAlert system for its notification purposes via CodeRED. The County is responsible for executing and maintaining its contract with OnSolve LLC, the owner of the CodeRED system, and serves as the overall system administrator. The City of Santa Rosa is granted access under the MOU to CodeRED in order to activate SoCoAlert and notify City residents with emergency communications. SoCoAlert is not intended to provide non-emergency notification to the public, as with some other popular public safety tools. It is only used if there is a public safety threat. A key element of SoCoAlert is marketing to the residents to ask them to register their address and to select the methods by which they wish to be notified; home phone, text, mobile phone, work phone and/or email. Only residents who register online at SoCoAlert.com are able to receive alerts and warnings outside the ISDN (Integrated Services Digital Network). Resident data provided to OnSolve LLC. is intended for use for SoCo Alert purposes only and is not to be shared or used for any other purpose. The City and County desire to add some customer information from the City’s Water billing database (“Water data”) – name, address and phone numbers- into the CodeRED database in order to make the SoCoAlert system even more effective by adding additional residents who may need emergency notifications. The Water data will only be used to notify residents of emergency or life safety notifications.
2. **Definition of Confidential Information** –“Confidential Information” means any non-public information and all copies thereof in whatever form or medium that is designated by Disclosing Party as being confidential, including water data customer information whether such information is furnished directly or indirectly by a Disclosing Party to a Receiving Party, and whether disclosed in anticipation of this Agreement or after the date of this Agreement.
3. **Permitted Use** - This Agreement is made in order for the County and OnSolve LLC to obtain certain information for the purpose of the following project: Use of City of Santa Rosa’s Water billing customer data to provide emergency notices under terms that will protect the confidential and proprietary nature of such information. Confidential Information disclosed under this Agreement may be used by a Receiving Party for the sole purpose of the Permitted Use and shall not be used for any other purpose.
4. **Permitted Disclosure/Standard of Care** - Receiving Party shall not disclose any of Disclosing Party’s Confidential Information except as specifically provided in this Agreement. Receiving Party shall protect Confidential Information from disclosure with the same degree of care Receiving Party uses to protect its own proprietary information similar in nature, provided such degree of care is at least a reasonable degree of care given the nature of the Confidential Information. Receiving Party shall not disclose Confidential Information to any person other than directors, officers, employees and consultants of Receiving Party or of its parent companies or affiliates (affiliates being entities under common control and ownership with Receiving Party) who have an absolute need to know the Confidential Information, who are informed by Receiving Party of the confidential nature of the Confidential Information and who are bound by obligations of confidentiality either by written agreement or by professional duty of confidence (“Permitted Persons”). Receiving Party may make copies of the Confidential Information only as is absolutely necessary for the Permitted Use. In the event Receiving Party becomes aware of any misappropriation or misuse of Confidential Information, Receiving Party shall promptly notify Disclosing Party in writing and assist Disclosing Party in any proceedings related thereto.

A party may disclose Confidential Information where it is required by law, including the California Public Records Act or court order, to be disclosed, in which case, Receiving Party shall give Disclosing Party as much notice as is reasonably practical so that Disclosing Party may seek a protective order or other confidential protection as Disclosing Party, in its sole discretion, may elect and Receiving Party shall reasonably cooperate, at Disclosing Party's expense, with the Disclosing Party in the Disclosing Party's efforts to obtain such order or protection. The foregoing provision is subject to the Receiving Party's obligation to comply with deadlines imposed by law, regulation, or court order.

5. **Exceptions to Confidentiality** – In addition to the exemptions provided under Paragraph 4, the obligations of confidentiality shall not apply to any item of Confidential Information to the extent Receiving Party can establish that such item of Confidential Information:
- a. is or becomes part of the public domain through no fault or omission of Receiving Party
 - b. is disclosed by Disclosing Party to others without restrictions on use and disclosure
 - c. becomes known or available to Receiving Party without restriction from a source other than Disclosing Party without breach of agreement by Receiving Party
 - d. is disclosed with the prior written approval of Disclosing Party
 - e. is independently developed by Receiving Party without the use the Confidential Information of the Disclosing Party
 - f. is known to Receiving Party on a non-confidential basis prior to disclosure by Disclosing Party to Receiving Party

The burden of proving that information is not Confidential Information shall be on the party asserting such exclusion.

6. **Rights of Ownership** - All Confidential Information disclosed to Receiving Party pursuant to this Agreement shall be and shall remain the property of Disclosing Party or its licensors. Receiving Party recognizes and agrees that nothing in this Agreement shall be construed as granting any property rights to Receiving Party.
7. **Remedies** - Each party acknowledges that the other will have no adequate remedy at law if it violates any of the provisions of this Agreement. Accordingly, each party shall have the right, in addition to any other rights and remedies it may have, at law, in equity or otherwise, to seek in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach hereof or otherwise to specifically enforce any of the provisions of this Agreement. Furthermore, in no event shall any party be liable for special, exemplary, incidental, or consequential damages arising from the breach of this Agreement, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen by such breaching party. Should an action be brought, the prevailing party (as determined by a court) shall be entitled to reasonable attorneys' fees and costs in addition to any other relief which may be awarded.
8. **Return of Confidential Information** – At the request of Disclosing Party, Receiving Party shall immediately return all copies of the Confidential Information or Receiving Party shall destroy all such copies and provide a written certification from an officer of Receiving Party that all such copies have been destroyed. Notwithstanding anything contained herein, the Receiving Party is entitled to retain Confidential Information of Disclosing Party if Receiving Party reasonably determines that such retention is required by applicable law, regulation, legal process, professional duty, or document retention policy, including but not limited to any information ordinarily retained via archive or backup process.
9. **Disclaimers**- Nothing in this Agreement shall obligate either party to enter into any other agreements or to provide any information. No representation or warranty of any kind is given by Disclosing Party with respect to the Confidential Information disclosed to Receiving Party including, but not limited to, any representation or warranty as to its accuracy or completeness. The Disclosing Party shall not have any liability or responsibility for errors or omissions in, or any decisions made by the Receiving Party in reliance on any Confidential Information disclosed under this Agreement. No partnership or other binding relationship is made by entering into this Agreement. Each party shall bear its own expenses in relation to this Agreement. Each party will comply with all applicable laws (including the Export Administration Act), rules, and regulations of competent public authorities relating to its performance of this Agreement

10. **Term and Termination** – Either party may terminate this Agreement on thirty days (30) written notice to the other party at the following address:

If to County: Attn: Director of Fire & Emergency Services
2300 County Center Dr., 220 B
Santa Rosa, CA 95403

If to City: Attn: Neil Bregman, Emergency Preparedness Coordinator
Santa Rosa Fire Department
2373 Circadian Way, Santa Rosa, CA 95407

95407

With Copy to: Santa Rosa City Attorney
100 Santa Rosa Ave, Room 8
Santa Rosa, CA 95404

If to OnSolve LLC: Attn: Legal
780 West Granada Blvd.
Ormond Beach, FL 32174

or at such other address that a party may hereafter give to the other in writing. Notwithstanding the termination of this Agreement by either party, all provisions of this Agreement relating to the rights and obligations concerning Confidential Information disclosed prior to the effective date of termination of this Agreement shall continue for a period of five (5) years from the date of disclosure of the Confidential Information and Section 3 shall apply to such Confidential Information during the same period.

11. **Miscellaneous** - This Agreement shall be governed and construed by the laws of California without reference to the choice of law principles and shall be binding upon the parties and their respective successors and assigns. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations and communications, written or oral, between the parties with respect to the subject matter hereof. Any amendment or modification of this Agreement shall be in writing and executed by duly authorized representatives of the parties. The failure by Disclosing Party to enforce at any time any of the provisions of this Agreement shall not be construed or deemed to be a waiver of Disclosing Party's rights hereunder nor shall it prejudice Disclosing Party's rights to take subsequent action. Nothing in this Agreement restricts either party's ability to enter into other agreements or conduct business with third parties except that no Confidential Information can be used for the purposes thereof contrary to this Agreement. This Agreement may be executed in counterparts and by facsimile or in PDF format, each of which shall be deemed an original, but both of which taken together shall constitute one and the same instrument. Sections 5 to 10 shall survive the termination of this Agreement.

Executed as of the day and year first above stated.

SONOMA COUNTY

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM:

Office of the County Counsel

ATTEST:

Clerk of the Board

CITY OF SANTA ROSA,
a Municipal corporation

By: _____

Print Name: _____

Director, _____ Department

Title: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

City Clerk

Consultant: **ONSOLVE, LLC**

[TYPE OF BUSINESS ENTITY (check one)]:

- Individual/Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Other (please specify: _____)

Signatures of Authorized Persons:

By: _____ Print Name: _____

Title: _____ By: _____

Print Name: _____ Title: _____

City of Santa Rosa Business Tax Cert. No. _____