THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA:6.B.2
AGENDA DATE: October 5, 2021

SUBJECT:
Approval to Adopt the Electronic Signature Use Policy and Authorize Information Technology Central to Implement and Amend the Policy as Necessary

BOARD ACTION AS FOLLOWS: **RESOLUTION NO. 2021-0477**

On motion of Supervisor B. Condit **Seconded by Supervisor** Grewal
and approved by the following vote,
Ayes: Supervisors: B. Condit, Grewal, C. Condit, and Vice-Chairman Withrow
Noes: Supervisors: None
Excused or Absent: Supervisors: Chiesa
Abstaining: Supervisor: None

1) X **Approved as recommended**
2) _____ **Denied**
3) _____ **Approved as amended**
4) _____ **Other:**

MOTION:

Kelly Rodriguez

ATTEST: KELLY RODRIGUEZ, Assistant Clerk of the Board of Supervisors

File No.

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM

DEPT: Chief Executive Office

BOARD AGENDA:6.B.2
AGENDA DATE: October 5, 2021

CONSENT: ☑

CEO CONCURRENCE: YES

4/5 Vote Required: No

SUBJECT:

Approval to Adopt the Electronic Signature Use Policy and Authorize Information Technology Central to Implement and Amend the Policy as Necessary

STAFF RECOMMENDATION:

1. Adopt the Stanislaus County Electronic Signature Use Policy.
2. Authorize Information Technology Central to implement and amend the policy as necessary to ensure compliance with State and Federal requirements and encourage use by County staff and vendors.

DISCUSSION:

On March 31, 2020, the Board of Supervisors authorized the use of and acceptance of facsimile, electronic, and digital signatures to conduct County business until the termination of the COVID-19 emergency declaration (Resolution No. 2020-0146). The countywide authority to utilize electronic signatures will end when the COVID-19 emergency declaration is terminated; therefore, it is recommended that the Board of Supervisors adopt a permanent countywide Electronic Signature Policy (Policy).

To respond to the immediate need for utilizing electronic signatures, Information Technology Central (ITC) recommended County Departments/Agencies utilize Adobe for electronic signatures. The County has a three-year enterprise agreement with Adobe, through ITC, which includes sign and fill functionality as well as formal Adobe Sign functionality. The three-year enterprise agreement allows for 5,000 Adobe Sign transactions per year at no additional cost to the County. As of June 2021, the County completed 6,665 Adobe Sign transactions across 10 user groups (Departments) for the 2020-2021 Fiscal Year. ITC absorbed the costs of the transactions over the 5,000 threshold, however, will start charging County departments per transaction in Fiscal Year 2021-2022.

The use of electronic signatures has enabled the County to conduct business through the COVID-19 emergency and there have been efficiency gains that will provide long term benefits to the County. The General Services Agency Purchasing Division has been utilizing electronic signatures since approval of the updated purchasing policy on June 25, 2019 (Resolution No. 2019-0407) providing business efficiencies.

This countywide Electronic Signature Policy establishes when electronic signature technology may replace a hand-written signature, with the goal of encouraging the use of paperless, electronic documents whenever appropriate and allowed by law. This Policy applies to all signatures used in processing various County documents as allowed by law and assumes the County signer has been given the authority to sign as determined by the Agency/Department and County Counsel.

This Policy applies to documents requiring a signature of any person where the signature is intended to show authorship, approval, authorization, or certification, as allowed by law. It is the Policy of the County to encourage the use of electronic signatures in all internal and external activities, documents, and transactions where it is operationally feasible to do so, where existing technology permits, where it is otherwise appropriate based on the department's preferences, and when legally permitted. In such situations, affixing an electronic signature to the document in a manner consistent with this Policy shall satisfy the County's requirements for signing a document. As used in this Policy, the term "signature" includes using initials on a document instead of a signature.

While the use of electronic signatures is suggested and encouraged, this Policy does not require any County Agency/Department to use electronic signatures, nor can the County mandate that any third party signing a document use electronic signature. Each County department has discretion to decide whether to permit the use of electronic signatures. Departments will work with County Counsel to determine where applicable laws permit an electronic signature to be used. In addition, each Agency/Department that opts to use electronic signatures must adopt/amend their business practices to support the requirements of this Policy.

An internal workgroup consisting of the Auditor-Controller, Chief Executive Office, Clerk of the Board, County Counsel, General Services Agency, and Information Technology Central developed this Policy. In addition, the workgroup performed due diligence comparing Adobe to DocuSign, the leading competitor in electronic signature services, and determined that at this time Adobe is most appropriate functionally and economically.

It should be noted, that while ITC generally recommends the use of Adobe for electronic signatures at this time, the use of other electronic signature products such as DocuSign, are acceptable if they are listed on ITC's Pre-Approved Information Technology Products and Services List and/or if used by an organization that the County is conducting business with.

POLICY ISSUE:

The legality and use of electronic signatures are governed by federal and state law including 15 United States Code §§ 7001, et seq.; U.S. Federal Electronic Signatures in Global and National Commerce Act; California Government Code §16.5; Uniform Electronic Transactions Act; and California Civil Code §§ 1633.1, et seq.

The utilization of digital and electronic signatures for County procurement are detailed in Section 15.4 of the General Services Agency Purchasing Policy adopted by the Board of Supervisors June 25, 2019 in Board Resolution 2019-0407.

Approved electronic signature technologies are maintained by ITC on the Pre-Approved Products and Services List and may change over time.

FISCAL IMPACT:

The countywide Electronic Signature Policy enables Stanislaus County Agencies, Elected Officials and Departments to increase productivity and ensure convenient, timely and appropriate access to County information by using electronic signature technology to collect and preserve signatures on documents quickly, securely, and efficiently.

The three-year enterprise agreement with Adobe includes 5,000 Adobe Sign transactions annually at no additional cost. Once the County has reached this allowance there is a transaction cost $3.75/transaction that will incur and be billed back to County departments based on actual usage. The estimated annual cost for Fiscal Year 2021-2022 is approximately $6,200 based on the previous usage of 6,655 transactions annually; with 5,000 at no additional cost and 1,655 transactions at $3.75 each for a total estimated cost of $6,200.

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions support the Boards' priority of *Delivering Efficient Public Services* by providing improved efficiency and flexibility for County Departments/Agencies by furthering the County's on-going efforts to implement more electronic solutions and thereby replace paper-based processes as described in the "Online not In Line" initiatives over recent years.

STAFFING IMPACT:

Existing Information Technology Central staff will continue to educate all County departments on the countywide Electronic Signature Policy and ensure compliance as needed to meet State and Federal requirements.

CONTACT PERSON:

Paul Gibson (209) 525-6529
Director, Information Technology Central

ATTACHMENT(S):

1. Electronic Signature Policy

Stanislaus County Electronic Signature Policy

A. Purpose

The Countywide Electronic Signature Policy shall be used by Stanislaus County Agencies, Elected Officials and Departments using electronic signature technology to collect and preserve signatures on documents. Electronic signatures increase productivity and ensure convenient, efficient, timely, secure and appropriate access to County information. In addition to increasing productivity and efficiency, this Policy furthers the County's on-going efforts to implement more electronic solutions and thereby replace outdated paper-based processes as described in the "Online not In Line" initiatives over recent years.

This Policy establishes when electronic signature technology may replace a hand-written signature, with the goal of encouraging the use of paperless, electronic documents whenever appropriate and allowed by law. This Policy applies to all signatures used in processing various County documents as allowed by law and assumes the County signer has been given the authority to sign as determined by Agency/Department and County Counsel.

While the use of electronic signatures is suggested and encouraged, this Policy does not require any Agency/Department to use electronic signatures, nor can the County mandate that any third party signing a document use electronic signature.

B. Background/Discussion

Electronic Signature is the broad umbrella category under which all electronic signatures fall.

The legality and use of Electronic Signatures are governed by federal and state law. (See 15 United States Code §§ 7001, et seq. [U.S. Federal Electronic Signatures in Global and National Commerce Act]; California Government Code §16.5; Uniform Electronic Transactions Act (California Civil Code §§ 1633.1, et seq.)

The utilization of digital and electronic signatures for procurement are detailed in Section 15.4 of the General Services Agency Purchasing Policy adopted by the Board of Supervisors June 25, 2019 in Board Resolution 2019-0407.

C. Policy

This Policy applies to documents requiring a signature of any person where the signature is intended to show authorship, approval, authorization, or certification, as allowed by law. It is the Policy of the County to encourage the use of electronic signatures in all internal and external activities, documents, and transactions where it is operationally feasible to do so, where existing technology permits, where it is otherwise appropriate based on the Department's preferences. In such situations, affixing an electronic signature to the document in a manner consistent with this Policy shall satisfy the County's requirements for signing a document. As used in this Policy, the term "signature" includes using initials on a document instead of a signature.

D. Agency/Department Discretion

Each Department has discretion to decide whether to permit the use of electronic signatures. Departments will work with County Counsel to determine where applicable laws permit an electronic signature to be used. In addition, each Agency/Department that opts to use electronic signatures must adopt/amend their business practices to support the requirements of this Policy. Additionally, departments utilizing electronic signatures shall develop procedures for use of electronic or digital signatures within their Agency/Department processes.

E. Electronic and Digital Signature Definitions and Uses

Electronic signature means an electronic sound, symbol, or process attached to, or logically associated with, an electronic record and executed or adopted by a person with the intent to sign the electronic record. The Uniform Electronic Transaction Act (UETA) authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency, when both parties agree to its use. (Cal. Civ. Code §§1633.1 – 1633.17). The electronic signature must be supported by evidence that the signature is the act of the intended person. An agreement executed with an electronic signature has the same legal enforceability as a wet signature, excluding documents that are exempt.

Fill and sign features, including signature or initials, are allowed to sign or initial internal documents. For example, electronic initials may be applied by the memo originator to an internal memo.

Digital signature means an electronic identifier, created by computer algorithm, intended by the party using it to have the same force and effect as the use of a manual signature. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (h) of §§1633.2 of the California Civil Code. A digital signature has strict security requirements that may be used to execute certain written communications and agreements with the County if it satisfies the requirements found in Cal. Gov. Code §16.5, et. seq. and Title 2, division 7 Chapter 10 of the California Code of Regulations. (2 CCR §§22000- 22005)

Proxy signatures are when Person-A authorizes Person-B to sign Person-A's signature on his/her behalf. While not recommended generally, Proxy Signature may be used in certain circumstances as determined by County Counsel. For example, if an available application allows for delegation of signatures, such as PeopleSoft to approve timesheets while a supervisor is out of the office, then the use of proxy signature is allowed.

F. Exemptions

Electronic signatures may not be used in all situations. Documents that may not be completed using electronic signatures include but are not limited to:

- Laws governing the creation and execution of wills, codicils, or testimony trusts;
- Certain transactions governed by the Uniform Commercial Code; laws requiring specifically that identifiable text or disclosures in a record or portion of a record be separately signed, including initialed, from the record; and

- Certain transactions governed by the Business and Professions Code and Uniform Commercial Code (Cal. Civ. Code 1633.3)

County staff should consult with County Counsel if they have questions regarding whether a document is eligible for electronic signature.

G. Common Types of Documents

This Policy is intended to broadly permit the use of electronic signatures. Examples of common types of documents are listed in the following table, with notes on each type of document. Agencies and Departments should work with County Counsel to determine where applicable laws permit an electronic signature to be used.

Document Type Examples	**Is Use of an Electronic or Digital Signature Acceptable?**	**Notes**
Internal Memo; Informal documents created and kept internal to Stanislaus County; not to be used in any court of law, request form for time off, etc.	Yes	Informal electronic initials or signatures (i.e. Adobe Fill & Sign) accepted. Electronic Signature not required but also accepted.
External Memos, Forms, Board Letters, and Other Correspondence	Yes	Electronic Signature is recommended.
Contracts, Memorandum of Understanding (MOU)	Yes	Electronic Signature is recommended.
Certificates, Permits	Yes, if allowed by law	Departments shall work with County Counsel to determine if applicable laws permit an electronic signature or digital signature to be used.
Documents Requiring Notarization	No	
Other Documents Requiring the Board Chair's Signature	No – Only in a declared emergency	See BOS Resolution 2020-0146
Financial Documents	Yes, if allowed by law	Departments shall work with County Counsel to determine if applicable laws permit an electronic signature to be used.
Human Relations related items, employee reviews	Yes, if allowed by law	Departments shall work with County Counsel to determine if applicable laws permit an electronic signature to be used.
Legal Items (Declarations, Court Filings)	Yes, if allowed by law	Departments shall work with County Counsel to determine if applicable laws permit an electronic signature to be used.

H. Use of Facsimile Signature

The use of a facsimile signature of the Chairperson of the Board is authorized for use on all copies of resolutions, orders, ordinances, letters, contracts, minutes, and records of this Board, upon which the chairperson has been authorized, empowered or instructed to sign by order or resolution of the Board, or by ordinance or statute; however, the Chairperson can only delegate the affixing of his/her facsimile signature or digital signature on resolutions, ordinances and minutes during an emergency (as described in Resolution 2020-0146, approved on March 30, 2020) to the Clerk of the Board of Supervisors or his/her duly qualified designees.

I. Requirements of Electronic Signature

1. Unique to the person using it;
2. Capable of verification;
3. Under the sole control of the person using it;
4. Must be linked to the data in such a way that if the data is changed the signature will be invalidated; and
5. Conforms to regulations adopted by the Secretary of State.

J. Electronic Signature Solution Providers

The Stanislaus County Information Technology Department, in coordination with the Information Technology Steering Committee, will be responsible to determine acceptable technologies and electronic signature providers consistent with current state legal requirements and industry best practices to ensure the security and integrity of the data and the signature. The Information Technology Central Department will include approved electronic signature providers on the Pre-Approved Information Technology Products and Services list.

K. Express Agreement

When the parties to an agreement desire to use electronic signatures for executing the agreement, a term shall be included in the agreement to memorialize the use of electronic signatures for the agreement.

L. Submission for Approval and Execution

Once the electronic agreement is complete and has been electronically signed by the duly authorized representative of the other parties, it may be submitted for execution by the Board of Supervisors or the individual who has the delegated authority to bind the County for that contract type. When a document is electronically signed by all parties, the County will provide a copy of the electronically signed document to the other parties in an electronic format that is capable of being retained and printed by the other parties.

M. Retention

The executed electronic agreement must be maintained pursuant to the County Records Retention Policy, or statute within a County approved secure retention process. The secure

method of retention of the final agreement must lock the document, preventing any changes to the final executed agreement, such as un-editable PDF.

N. Change or Error in Electronic Record

If a change is needed or an error is being corrected within the electronic record of the fully executed agreement, those actions will comply with the requirements of Cal. Civ. Code § 1633.10 or will be addressed through a contract amendment.

O. Conclusion

The use of e-Signature is intended to make Stanislaus County business practices more efficient. The process eliminates the need to print, file, and store paper copies of documents that can now be authenticated digitally and stored electronically.