RESOLUTION - ACTION REQUESTED 2020-496

MEETING: August 11, 2020

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Electronic/Digital Signatures Resolutions and Policy

RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution Authorizing the Use of Electronic and Digital Signatures and Establishing a Policy for their Use.

Currently, County operations require manually written ("wet") signatures whenever signatures are needed. However, an electronic signature policy would better serve the County's interests because obtaining wet signatures is often a tedious, time-consuming process that involves multiple staff in various departments. Fortunately, provisions exist in California's Uniform Electronic Transactions Act (UETA) (Cal. Civ. Code Sections 1633.1, et seq.) for the use of electronic records to be used to conduct transactions, unless an exception applies. The UETA also notes that if "a law requires a signature, an electronic signature satisfies the law." For purposes of this title, a "digital signature," as defined in Section 16.5(d) of the California Government Code (GC), is a type of electronic signature (Cal Civ Code Section 1633.2(h)). Thus, under this broad definition, a digital signature as defined by the Government Code is a legally acceptable form of electronic signature under the UETA.

Additionally, GC Section 16.5 defines the parameters of valid digital signatures as follows:

In any written communication with a public entity, ...in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. If a public entity elects to use a digital signature, that digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

1. It is unique to the person using it.
2. It is capable of verification.
3. It is under the sole control of the person using it.
Resolution - Action Requested 2020-496

(4) It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.

(5) It conforms to regulations adopted by the Secretary of State.

Utilizing the above parameters, as well as those promulgated by the California Secretary of State (attached to this item), Technical Services staff identified vendor, ZorroSign, as meeting all of the technical requirements. On May 6, 2020, a contract was executed with ZorroSign to assist with pay certificates and other internal operations during the closure of offices caused by the COVID-19 Shelter In Place Order. The experience only reinforced staff expectations that the use of digital signatures will facilitate more efficient processes going forward, especially once the new Enterprise Resource System comes online.

While State law permits the use of digital signatures that meet the stated technical requirements, it also notes that, “Nothing in this section shall require a public entity to use or permit the use of a digital signature” (GC Sect. 16.5(b).) Thus, today’s action seeks authorization for the use of digital signatures under these requirements.

It should also be noted that the attached policy also considers times when digital signatures are not permissible - as with partner agencies and entities who still require wet signatures on documents. Additionally, there may be other times when statutes or case law require wet signatures, as with the signatures required to endorse an initiative petition under the California Elections Code (Ni v. Slocum (2011) 196 Cal.App.4th 1636, 1637.) Consequently, discretion regarding the use of digital signatures remains solely with the department head.

Finally, no part of this action is intended to change any existing contracting authority or processes.

Thus, for all of the above reasons, staff is now requesting the adoption of the attached resolution and policy to allow the use of digital signatures on a County-wide basis where legally permissible.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
None. The Board has never considered the issue of digital signatures.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
The Board could choose not to adopt the resolution. The lack of such authority would prevent the use of electronic/digital signatures to conduct County business.

FINANCIAL IMPACT:
None. The County already maintains a contract with a signature vendor.

ATTACHMENTS:
RESOLUTION - ACTION REQUESTED 2020-496

Resolution Authorizing the Use of Electronic/Digital Signatures (DOCX)
Electronic/Digital Signature Policy (DOCX)

RESULT: ADOPTED [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Rosemarie Smallcombe, Marshall Long, Kevin Cann, Miles Menetrey
EXCUSED: Merlin Jones
MARIPOSA COUNTY RESOLUTION NUMBER 20-496

RESOLUTION AUTHORIZING THE USE OF DIGITAL/ELECTRONIC SIGNATURES FOR COUNTY BUSINESS, AND ESTABLISHING THE COUNTYWIDE ELECTRONIC/DIGITAL SIGNATURE POLICY

WHEREAS, County operations currently require manually written ("wet") signatures whenever signatures are needed on contracts, forms, or other documents, which is inefficient and takes needless time for routing of documents and procurement of signatures; and

WHEREAS, California’s Uniform Electronic Transactions Act (UETA) (Cal. Civ. Code Sections 1633.1, et seq.), provides that electronic records can be used to conduct transactions, unless an exception applies, and that if “a law requires a signature, an electronic signature satisfies the law”; and

WHEREAS, a “digital signature” is defined in Section 16.5(d) of the California Government Code (GC) as a type of electronic signature (Cal Civ Code Section 1633.2(h)) and, thus, is a legally acceptable form of electronic signature under the UETA; and

WHEREAS, under the provisions of GC Section 16.5, “in any written communication with a public entity, ...in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section; and

WHEREAS, GC Section 16.5 also notes that “if a public entity elects to use a digital signature, that digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

1. It is unique to the person using it
2. It is capable of verification
3. It is under the sole control of the person using it
4. It in linked to data in such a manner that if the data are changed, the digital signature is invalidated
5. It conforms to regulations adopted by the Secretary of State; and

WHEREAS, while State law permits the use of digital signatures that meet the stated requirements, Cal. Gov. Code, Section 16.5(b) notes that “Nothing in this section shall require a public entity to use or permit the use of a digital signature”; and

WHEREAS, discretion regarding the use of digital signatures should rest with the Department Heads as wet signatures may still be mandated within their area of expertise, or required by other agencies or entities; and

WHEREAS, the use of digital signatures will facilitate more efficient use of staff time and County resources, especially after the new Enterprise Resource System comes online; and
**WHEREAS**, the establishment of a Countywide Electronic/Digital Signature Policy will facilitate the use of Electronic signatures by County staff.

**NOW, THEREFORE BE IT RESOLVED** that the Mariposa County Board of Supervisors does hereby authorize the use of digital/electronic signatures for any and all County business that does not require wet signatures; and

**BE IT FURTHER RESOLVED** that discretion regarding use of such digital/electronic signatures rests solely with the Department Heads; and

**BE IT FINALLY RESOLVED** that the use of such digital/electronic signatures shall be guided by the Countywide Electronic/Digital Signature Policy which is hereby established.

**PASSED AND ADOPTED** by the Board of Supervisors of Mariposa County on this 11th day of August, 2020, by the following vote:

AYES: SMALLCOMBE, LONG, CANN, MENETREY
NOES: NONE
EXCUSED: JONES
ABSTAIN: NONE

KEVIN CANN, Chair
Mariposa County Board of Supervisors

ATTEST:  
René LaRoche, Clerk of the Board

APPROVED AS TO FORM

Steven W. Dahlem, County Counsel
1.0 PURPOSE
Recognizing the necessity for Electronic/Digital Signatures as an integrated technology, the purpose of this policy is to establish guidelines for the appropriate business use of electronic and digital signatures by all Mariposa County agencies, departments, and employees, as well as to provide guidance regarding when an electronic or digital signature may replace a handwritten (wet) signature.

2.0 POLICY INTENT
This policy is meant to broadly permit and encourage the use of electronic signatures County-wide including, but not limited to, all internal and external activities, as well as for all documents and transactions where it is legally permissible, operationally feasible to do so, where existing technology permits, and where it is otherwise appropriate based on the Department's needs. It applies to documents requiring a signature or initials of any person where the signature or initials are intended to show authorship, approval, or authorization as allowed by law.

Consequently, there is no longer a preference for obtaining original/wet signatures from vendors on signed contracts. Affixing an electronic signature to any document in a manner consistent with this Policy shall satisfy the County's requirements for signing a document.

Throughout this policy, the term "electronic signatures" is used to refer to both electronic signatures and digital signatures as defined below. Individual circumstances will dictate which type of signature is appropriate. This policy is designed to allow for the use of whichever type of signature is most appropriate for the occasion.

3.0 POLICY LIMITATIONS
This policy is not meant to change any other authority or requirement including limitations on contract amounts or established routing/approval processes.

4.0 DEFINITIONS
- Electronic signature
  
  A generic term that refers to any representation in electronic form that can be used to express intent, including a printed name at the bottom of an e-mail, a digitized copy of a handwritten signature, a biometric mark, a sound or a digital signature. An Electronic Signature provides:
  - Who signed
  - What was signed
  - Captures intent and consent
Countywide Electronic/Digital Signature Policy

- Significantly increases the ease and flexibility of signatory process
- Digital signature
  - A specific type of signature that works on an underlying technology that uses public-key cryptography and is known as public-key infrastructure (PKI). A Digital Signature:
    - Secures sensitive data associated with documents through encryption
    - Detects tampering efforts and invalidates associated documents
    - Strengthens electronic signatures as a trusted tool.

5.0 DEPARTMENT DISCRETION
This policy is intended to permit the broad use of electronic signatures County-wide but recognizes that there may be times when wet signatures are necessary. Responsibility for determining what documents require wet signatures rests with the Department Head.

6.0 DOCUMENT TYPES
Common types of documents and their treatments are listed in Appendix A. However, departments should consult County Counsel to determine whether applicable laws permit electronic signatures for document types not listed in the appendix.

7.0 BUSINESS PROCEDURES
Each County Agency or Department that opts to use electronic signatures must adopt/amend their business procedures and document retention schedules to support the requirements of this Policy, as well as the applicable laws for specific document types.

8.0 CONSENT REQUIRED
No party to an agreement or other document can be forced to accept an electronic signature from the County. Consequently, all parties to any contract, agreement, or document will be required to opt-in via a Consent to Use Electronic Signature form which will be attached to each digital agreement. Consent to use electronic signatures may be withdrawn at any time prior to complete execution of an agreement by contacting the Clerk of the Board’s Office, but will apply to the specified document, not those already completed.

9.0 EXTERNAL SIGNATURE SECURITY
When an electronic signature initiated by another party is received by the County, the receiving Department should ensure, with a reasonable degree of certainty, that the sender’s electronic signature was affixed by a service meeting the security controls of the County and the California
10.0 SECURE ELECTRONIC SIGNATURES

“Secure Electronic Signatures” are those that meet all of the following criteria:

- Must be unique to the person using it.

- Must be capable of verification. This means that the technology used permits the signature’s authenticity to be verified. Use of a signature service like Adobe Sign to add a digitally-encrypted signature meets this requirement. Simply pasting a signature image into a Word document or PDF without other security does not meet this requirement because the image can be forged.

- Must be under the sole control of the person using it. Only the signatory has the ability to affix the signature. Department heads should NOT share their logins with assistants, deputies, or other staff.

- Must be linked to the data in the document in such a manner that if any of the data is changed, the digital signature is invalidated.

Electronic signatures processed through the County’s approved signature service meet the criteria for Secure Electronic Signatures. Consequently, staff is encouraged to limit electronic signatures to that service.

11.0 ACCOUNTABILITY

County employees’ use of electronic signatures and/or records bearing electronic signatures, shall be consistent with applicable federal, state, and local laws, as well as any regulations and policies including all information technology security policies.

Employees who use electronic signatures in a manner that is not consistent with applicable laws, policies, or procedures (e.g., falsifying a signature, altering signed documents, or unauthorized use of County eSignature licenses) may be subject to disciplinary action up to and including termination, and/or the conduct may result in criminal investigation and prosecution. All inquiries and violations shall be immediately made known to the County Administrative Officer.

12.0 ACCEPTABLE TECHNOLOGIES

Given the complex nature and ongoing evolution of signature technologies, responsibility for identifying and vetting appropriate technologies that meet all legal requirements for Secure
Electronic Signatures rests solely with Technical Services. Consequently, Departments are authorized to initiate signatures only through the County’s approved signature service(s).
### APPENDIX A
Examples of Common Document Type Handling

<table>
<thead>
<tr>
<th>Document Type</th>
<th>Electronic/Digital Signature Acceptable?</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications, Certificates, Permits</td>
<td>Yes, if allowed by law</td>
<td>The Department should work with County Counsel to determine whether applicable laws permit an electronic signature to be used.</td>
</tr>
<tr>
<td>Attestations, Certifications, Notarizations</td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>Board approved items, including contracts, grant applications, letters, and other documents</td>
<td>Yes</td>
<td>Where applicable, allowable, and appropriate. Documents must be routed through the Clerk of Board’s Office for digitization of signatures using the County’s Secure Electronic Signature provider.</td>
</tr>
<tr>
<td>Board Resolutions, Ordinances, Proclamations, Memorial Certificates, or Certificates of Appreciation</td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>Budget Action Forms</td>
<td>Yes</td>
<td>Secure Electronic Signature as outlined in this policy.</td>
</tr>
<tr>
<td>Employee/HR related Forms, Requests, Reports, and Reviews</td>
<td>Yes</td>
<td>If an employee requests that an item be signed in hardcopy format, the Department should issue the item in that format.</td>
</tr>
<tr>
<td>Financial Documents</td>
<td>Yes, if allowed by law</td>
<td>If wet signatures are obtained, the document may be scanned and stored electronically.</td>
</tr>
<tr>
<td>Grant applications submitted by departments</td>
<td>Yes</td>
<td>The Department should work with County Counsel to determine whether applicable laws permit an electronic signature to be used. The County does not require added security features for these purposes, however, the Department should follow the preferences of the granting authority.</td>
</tr>
<tr>
<td>Internal/external documents not included elsewhere, including Board memos, and normal letters/correspondence</td>
<td>Yes</td>
<td>The signature does not need to have added security features for these purposes, but the Department may opt to use a Secure Electronic Signature as outlined in this policy.</td>
</tr>
<tr>
<td>Legal Items (Declarations, Court filings, etc.)</td>
<td>Yes, if allowed by law</td>
<td>The Department should work with County Counsel to determine whether applicable laws permit an electronic signature to be used.</td>
</tr>
<tr>
<td>Oaths</td>
<td>NO</td>
<td>Contracts must be routed through the Clerk of the Board’s Office for digitization of signatures using the County’s Secure Electronic Signature provider. While digital signatures are preferred, vendors may opt to supply wet signatures.</td>
</tr>
<tr>
<td>Purchasing Agent/Assistant Purchasing Agent contracts (CAO and Dept. Heads)</td>
<td>Yes</td>
<td>If wet signatures are obtained, the document may be scanned and stored electronically.</td>
</tr>
</tbody>
</table>