

Folsom City Council Staff Report

MEETING DATE:	5/9/2023
AGENDA SECTION:	Consent Calendar
SUBJECT:	Resolution No. 11035 - A Resolution Authorizing the City Manager to Execute a Memorandum of Understanding with the Folsom Historic District Association (FHDA) for Operation of an Ice Rink on City Property
FROM:	Parks and Recreation Department

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends the City Council approve Resolution No. 11035 - A Resolution Authorizing City Manager to Execute a Memorandum of Understanding with the Folsom Historic District Association (FHDA) for Operation of an Ice Rink on City Property

BACKGROUND / ISSUE

There has been an ice rink in the Historic District since 2008. The ice rink has generally been set up around the Turntable area, although there were a few years it was in parking lot areas. The first year it was run by the Chamber of Commerce. In 2009 there was no ice rink. Since 2010, Folsom Historic District Association (FHDA) has been the organization to carry out the ice rink operation. Starting around 2013, the City began to receive additional inquiries for renting the Amphitheater (now named Zittel Amphitheater) and other city-owned areas in the Folsom Historic District Plaza area. As such, rental zones with hourly rental fees were established for the top of the parking garage, turntable, alley, and amphitheater. See Attachment 2 for zones and rates.

The first Memorandum of Understanding (MOU) with FHDA was executed in August of 2013 and had a term that expired January 25, 2020. There was no fee associated with the rental of City property at that time. In 2015, damage to the plaza concrete had become noticeable. Staff analyzed the repairs needed and by 2017, Staff and FHDA arrived at a cost-sharing arrangement to make those repairs. The total cost was \$40,403 with the City paying \$27,085 and FHDA paying \$13,318. Degradation of the concrete has continued to take place in subsequent years

but has not been addressed since 2017. At the end of 2019, the City and FHDA were preparing to create a revised MOU. Staff was in the process of proposing to include in the new MOU a fee structure that would include an equitable rental rate and a fee discussion about long-term maintenance of the concrete and other assets that were getting extra wear and tear due to the ice rink operation. Unfortunately, the pandemic postponed the completion of the revised MOU. In 2022, discussions resumed but new dynamics took place related to the ice rink vendor utilized by FHDA. The parties then decided to postpone the discussion to a future timeframe.

For purposes of background, the FHDA's request for exclusive use of the turntable and surrounding areas is for 5 weeks to set-up, about 2 ½ months of operation, and 2 weeks to break-down. This totals approximately 112 days or approximately 3 months and 3 weeks.

POLICY / RULE

Pursuant to FMC 2.36.270(A), all transfers, sales, donations, or other disposition of real property interests in city property shall be approved by the city council except as otherwise provided for in the FMC.

ANALYSIS

The city has rentable assets in the Historic District that include the Zittel Amphitheater, the turntable, and the alley areas. The top of the parking garage has not been requested for rent in the last 8 to 10 years. The most frequent user of these spaces is the FHDA. The FHDA holds many events throughout the year at the Zittel Amphitheater including concerts, festivals, and various shows. The total number of days that FHDA uses the amphitheater is about 110 days per year. The FHDA is also the applicant for the Farmer's Market which is held every Saturday (year-round) in the alley area. As noted previously, the FHDA is also the applicant for the yearly ice rink which spans approximately 112 days each year, including set up and breakdown. To date, the city has not charged the FHDA for use of the amphitheater, the alley, or the turntable.

In recent years, staff has received direction from the City Council to find ways to generate additional revenue. One such way would be to arrive at agreeable terms between the City and FHDA for both parties to achieve some revenue benefits from these rental uses. Staff has recently prepared a draft plan that outlines ways in which most of the FHDA events that are offered free to public would remain free of charge to FHDA, and then suggests ways for the City to receive revenue to offset expenses as well as create a new revenue stream from events where FHDA charges the public, such as the ice rink or other ticketed events. Staff had intended to send this draft plan to FHDA by the end of this month when the request to execute the MOU as soon as possible was received.

According to the FHDA, an executed MOU is needed to secure the investment and ensure the commitment to purchase the ice rink equipment.

Staff realizes this type of revenue arrangement takes time to discuss and work out the details between both parties. As such, the attached MOU suggests discussing those terms in good faith by August of this year. Staff will bring those rental terms to the City Council for review and direction.

Attached you will find an MOU that has been reviewed by both parties. All aspects of the MOU are agreeable to both parties with the exception of Item 25, that FHDA is not in agreement with. Item 25 states, "During the Term of this MOU, but not later than August 5, 2023, the parties agree to negotiate in good faith regarding fair and equitable rental fees for the exclusive use of City property. (Attachment 3).

FINANCIAL IMPACT

The city is currently not generating sufficient revenue to offset expenses to maintain the rental assets or generate new revenue from the rentals. Agreeable terms for revenue would be a positive change to the current arrangement.

ENVIRONMENTAL REVIEW

This action is not considered a project under Section 15061(b)(3) of the California Environmental Quality Act Guidelines, and as such is exempt from environmental review.

ATTACHMENTS

1. Resolution No. **11035** - A Resolution Authorizing City Manager to Execute a Memorandum of Understanding with the Folsom Historic District Association (FHDA) for Operation of an Ice Rink on City Property
2. Historic District Rental Zones and Fee Schedule
3. Proposed Memorandum of Understanding

Submitted,

Zachary Perras, Municipal Landscape Services Manager

ATTACHMENT 1

RESOLUTION NO. 11035

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE FOLSOM HISTORIC DISTRICT ASSOCIATION (FHDA) FOR OPERATION OF AN ICE RINK ON CITY PROPERTY

WHEREAS, the Folsom Historic District Association (“FHDA”) has sponsored and operated an ice rink on the Folsom Historic District Station Plaza over the past several years; and

WHEREAS, the areas where FHDA operated the ice rink on the Folsom Historic Station Plaza are owned by the City of Folsom (“City”); and

WHEREAS, FHDA desires to continue to make this venue available during the holiday season; and

WHEREAS, the City has historically provided the FHDA with the ability to utilize City property in the Historic District for this venture through a written contract; and

WHEREAS, both the FHDA and the City agree that the continuation of the annual ice rink would attract patrons to the Historic District and be of benefit to tourism, the local economy, and the residents of Folsom; and

WHEREAS, FHDA would like to provide its rink vendor with an assurance for using the Historic District property for an ice rink for a term that is longer than an annual use permit; and

WHEREAS, the City and FHDA agree during the term of this MOU, but no later than August 31, 2023, to negotiate in good faith regarding fair and equitable rental fees for the exclusive use of city property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Folsom that the City Manager is hereby authorized to execute a Memorandum of Understanding with the Folsom Historic District Association for operation of an ice rink on City property.

BE IT FURTHER RESOLVED that property rental fees, once negotiated by City staff and FHDA under the MOU for use of City property to operate an ice rink, shall be subject to City Council consideration and approval.

PASSED AND ADOPTED this 9th day of May 2023, by the following roll-call vote:

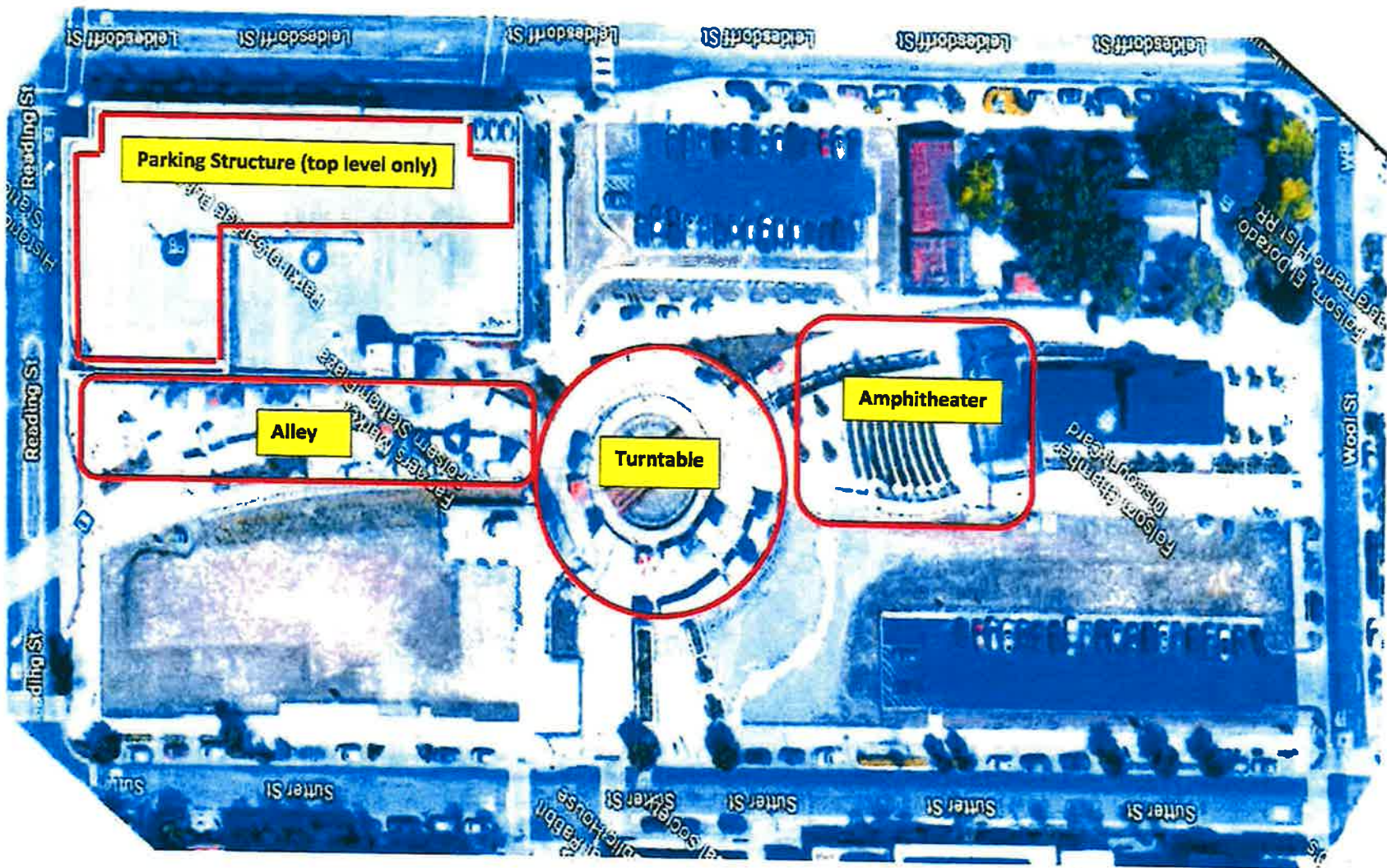
AYES: Councilmember(s):
NOES: Councilmember(s):
ABSENT: Councilmember(s)
ABSTAIN: Councilmember(s):

Rosario Rodriguez, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

ATTACHMENT 2



Parking Structure (top level only)

Alley

Turntable

Amphitheater

Fee Schedule



PARKS & RECREATION | 50 NATOMA STREET, FOLSOM, CA 95630 | WWW.FOLSOM.CA.US

FOLSOM
CITY OF
DISTRICTS BY NATURE

Parks & Recreation Department Community Facilities Fee Schedule

Facilities

	Non-Resident Fee per hour	Resident Fee per hour	Capacity (banquet)
Community Center Ballroom	\$260	\$180	560
Community Center East Room	\$130	\$95	233
Community Center West Room	\$130	\$95	275
Community Center R.G. Smith Room	\$55	\$45	50
Robert H. Miller III Rotary Clubhouse	\$100	\$80	128
<ul style="list-style-type: none"> • Fridays and Saturdays- 8-hour minimum/ Sundays through Thursdays- 4-hour minimum • Additional fees may apply for events serving food. • Government Agency discounts available. • Folsom Non-Profit groups receive a special rate Sun-Thu (Mon-Thu @ Rotary Clubhouse) • General Liability Insurance required for indoor facility rentals 			

Outdoor Venues

	Rate	Add-on Rate*
Dan Russell Rodeo Arena	\$1,500 per day	(Includes the day before for setup and day after for clean-up)
Zittel Family Amphitheater	\$175/hr.	
Turntable	\$125/hr.	\$100/hr.
Alleyway	\$75/hr.	\$50/hr.
Parking Structure (top floor only)	8 Hour Block \$2,500	12 Hour Block \$3,000
<ul style="list-style-type: none"> • Add-on hourly rate applies when venue is rented along with Zittel Family Amphitheater 		

Park Pavilions

	Daily Rate (up to 8 hours between 9am-8pm)	Capacity
Folsom City Lions Park Gazebo	\$250	40
Folsom City Lions Park Pavilion	\$250	200
Lew Howard Park Pavilion	\$250	200
Livermore Park Pavilion (near sand courts)	\$250	70
John Kemp Park Pavilion (blue side)	\$250	45
<ul style="list-style-type: none"> • Reservations must be placed 7 days or more in advanced. No reservations on holiday weekends 		

ATTACHMENT 3

DRAFT
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF FOLSOM AND
THE FOLSOM HISTORIC DISTRICT ASSOCIATION
REGARDING THE USE OF CITY PROPERTY
FOR AN ANNUAL ICE RINK

WHEREAS, the Folsom Historic District Association (“FHDA”) has sponsored and operated an ice rink on the Folsom Historic District Station Plaza over the past several years; and

WHEREAS, the areas where FHDA operated the ice rink on the Folsom Historic Station Plaza are owned by the City of Folsom (“City”); and

WHEREAS, FHDA desires to continue to make this venue available during the holiday season; and

WHEREAS, the City has historically provided the FHDA with the ability to utilize City property in the Historic District for this venture through a written contract; and

WHEREAS, both the FHDA and the City agree that the continuation of the annual ice rink would attract patrons to the Historic District and be of benefit to tourism, the local economy, and the residents of Folsom; and

WHEREAS, FHDA would like to provide its rink vendor with an assurance for using the Historic District property for an ice rink for a term that is longer than an annual use permit.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding (“MOU”) as set forth below:

1. The City will provide FHDA with the exclusive right to use the real property identified as the plaza turntable, and generally depicted on Exhibit A, subject to certain conditions and restrictions as set forth herein, and as from time to time established through the special event permitting process, for the sole purpose of operating an ice rink in the Folsom Historic District during the times set forth in this MOU. The City may alter or modify the area(s) reserved as needed for access or other issues that may arise from year to year. FHDA will contract with a vendor to use the ice rink consistent with City conditions and requirements.
2. The ice rink is currently contemplated to be around the Historic District turntable. The City will provide FHDA use of the area described in Exhibit A for this purpose and for ancillary services consistent with the ice rink (e.g., ticket booth, skate rental, beverage stand). Any other activities which are not ancillary to the ice rink operation

shall require a separate agreement or special use permit.

3. The ice rink would operate annually from approximately November 10 (Veterans Day weekend) through January 10 (MLK Day) of each year of the MOU. The City would make the property available to FHDA for this exclusive purpose from approximately October 5 to opening day on November 10 to allow time for set up, and from the last day of operation on January 10 until January 31 for break down and restoration of the property. The total time of exclusive use is October 5 to January 31 or approximately 3.75 months.
4. This MOU would permit FHDA to use of the City's real property identified in Exhibit A, under the terms and conditions described herein, beginning on or about October 5, 2023, and ending on or about January 31, 2028. This MOU will not be effective until it is executed by all parties and approved by the Folsom City Council.
5. FHDA shall be solely responsible to arrange for and pay any and all costs associated with the ice rink, including, but not limited to, contracting with any and all vendors to provide the ice rink, power, City garbage service, City water service, insurance, marketing, security, trash pickup in and around the facility, restoration and repair of the premises including but not limited to, concrete, railings, and landscaping at the end of the season, staffing and compliance with any and all laws and regulations. The City shall in no event be responsible in any manner whatsoever for any aspect of the ice rink.
6. FHDA shall be solely responsible for any safety and/or Americans with Disability Act or state disability law requirements associated with the ice rink, including access, handrails, maintenance, and compliance with state and federal laws and regulations.
7. FHDA shall not operate the ice rink until and unless it has obtained all licenses, permits, qualifications and approvals legally required under this MOU and state and federal laws and regulations. FHDA represents and warrants to City that FHDA shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this MOU any licenses, permits, and approvals which are legally required for the ice rink to operate, and will require the same of any vendors with which FHDA contracts for the operation of the ice rink.
8. FHDA's rights and obligations under this MOU are not assignable or transferable without the prior written approval of the City.
9. FHDA shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.
10. FHDA shall indemnify, protect, defend, save and hold City, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of FHDA or its officers, employees, agents, volunteers,

contractors, and subcontractors during performance of this MOU, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of FHDA or its officers, employees, agents, volunteers, contractors, or subcontractors, or by the quality or character of FHDA's work or activities, or resulting from the negligence of the City, its officers, employees, agents, and volunteers, except for loss caused solely by the gross negligence of the City. It is understood that the duty of FHDA to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under any permit or this MOU does not relieve FHDA from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this MOU, FHDA acknowledges and agrees to the provisions of this Section and that it is a material element of consideration

11. Each year, no later than August 5 (approximately 60 days prior to use of the location), FHDA shall apply for a Special Event Permit from the City, and shall therein specify the exact days of operation, associated vendors for the season, provide current insurance, parking and traffic plans, and comply with all requirements for the issuance of such a permit. The City shall have the right to specify any additional conditions of operation for the ice rink prior to issuing the permit. In no event shall FHDA be allowed to operate the ice rink without a current and valid Special Event Permit.
12. FHDA shall maintain insurance coverage and provide evidence of that coverage as required under the Special Event Permit during the time it annually uses the real property.
13. FHDA may terminate this MOU by providing thirty (30) days written notice to City. City may terminate this MOU for cause by providing thirty (30) days written notice to FHDA such as, for example, FHDA's breach of any provision of this MOU or a permit related to this MOU, or the City's inability to continue to make the subject real property available pursuant to the terms and conditions herein, regardless of the cause.
14. Development and use of the Historic District, other events, or the need of the City to use its property, may, from time to time, affect the operation of the ice rink, or may require the closure of the ice rink earlier than contemplated, or during the season of operation of the ice rink. The parties agree to coordinate schedules and any planned work to minimize interference with the ice rink operations. The City agrees to make every reasonable effort to prevent any such closure, but both parties acknowledge that such closure may become necessary. The parties will endeavor to address any operational issues each year with the Special Event Permit. Should any such closure or alteration of ice rink operations occur as described herein, there shall be no money due or owing to FHDA or its ice rink vendor by the City for the closure/alteration period.

15. The parties acknowledge that there is a potential for construction to occur on the Historic District Station Plaza and surrounding properties during the term of this MOU. Such construction may create noise, dust, traffic, or other activities that might affect the ice rink operation. FHDA and its ice rink operator acknowledge, in advance, that construction and related effects from it may exist, and agree that there shall be no City liability connected with such construction or related construction activities.
16. Any modification or amendment of any provision of this MOU shall be in writing and must be executed by all parties.
17. Notice: FHDA shall transmit any notices required under this MOU to City as follows:
Department of Parks and Recreation
City of Folsom
50 Natoma Street
Folsom, CA 95630

City shall transmit any notices required under this MOU to FHDA as follows:

FHDA
Executive Director
P.O. Box 515
Folsom, CA 95763
18. Waiver: In the event that either City or FHDA shall at any time or times waive any breach of this MOU by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition, or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.
19. Venue: This MOU and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Sacramento.
20. Enforceability: If any term or provision of this MOU is found to be void, voidable, invalid, or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this MOU shall remain binding.
21. Time: All times stated herein are of the essence.
22. Binding: This MOU shall bind and inure to the heirs, devisees, assignees, and successors in interest of FHDA and to the successors in interest of City in the same manner as if such parties had been expressly named herein.
23. Survivorship: Any responsibility of FHDA for warranties, insurance, indemnity, or compliance with laws with respect to this MOU shall not be invalidated due to the

expiration, termination, or cancellation of this MOU.

24. This instrument and any attachments hereto constitute the entire agreement between the City and FHDA concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.
25. During the Term of this MOU, but no later than August 31, 2023, the parties agree to negotiate in good faith regarding fair and equitable rental fees for the exclusive use of City property.

-END OF TEXT – SIGNATURE PAGE IMMEDIATELY FOLLOWS-

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

FOLSOM HISTORIC DISTRICT ASSOCIATION:

(If a corporation, must be signed by two officers of the corporation per Corporations Code section 313.)

Date Tax I.D. Number

Signature Signature

Print Name Print Name

Title Title

CITY OF FOLSOM, A Municipal Corporation:

Date Elaine Andersen, City Manager

ATTEST:

FUNDING AVAILABLE:

Christa Freemantle, City Clerk Date Stacey Tamagni, Finance Director Date

ORIGINAL APPROVED AS TO CONTENT:

ORIGINAL APPROVED AS TO FORM:

Director of Parks and Recreation Date Steven Wang, City Attorney Date

NOTICE: SIGNATURE(S) ON BEHALF OF FHDA MUST BE NOTARIZED.

A certificate of acknowledgment in accordance with the provisions of California Civil Code section 1189 must be attached for each person executing this agreement on behalf of consultant. This section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."