TO:            ACHD Board of Commissioners &
               Bruce S. Wong, Director

FROM:         David Serdar
               Right of Way Supervisor

DATE:         December 23, 2015

SUBJECT:      Vacation/Exchange of Public Right of Way - Public Hearing and
               adoption of Resolution Number 2126 for an application to vacate Indian Creek Street located in
               the NW ¼ of the NW ¼ of Section 25, Township 2 North, Range 1 West, and being that part of Indian Creek
               Street of AVALON ADDITION as shown in Book 5 of Plats at Page 239 in the office of the Recorder, Ada County,
               Idaho.

Regular Agenda / Public Hearing for Board of Commissioners meeting January 6, 2016

EXECUTIVE SUMMARY

This action is to vacate Indian Creek Street, 5.24 acres, more or less.

FACTS & FINDINGS

1. ACHD is requesting the vacation of the above-referenced right of way from Ada County Highway District. There is no written application (Attachment 1).

2. The area being proposed for the vacation encompasses approximately 5.24 acres, more or less. (Attachment 2).

3. The applicant is requesting this vacation to declare unopened right-of-way as surplus property.

4. Idaho Code, section 50-1306A(6) requires that before vacation can be authorized a public hearing must be held, with notice published in accordance with Idaho Code, section 40-206, where any person may appear and show cause that the vacation should not occur.

5. Notice of the public hearing is being published in the Idaho Statesman on December 22nd, 23rd, and 30th, 2015, with the last date of publication at least five (5) days before the hearing.
6. In accordance with Idaho Law and ACHD policy, comments were requested from the following public and private agencies and public utilities, regarding their plans for the area of the proposed vacation. In addition, ACHD staff has been notified and comments were requested concerning the requested vacation.

   A. ACHD Staff comments:
       none

   B. The following agencies had no response:
      Intermountain Gas Company
      Integra Telecom
      AT&T Communications
      Qwest
      Cable One Television
      Ada County Development Services
      Time Warner Telecom
      Kuna City Sewer
      Kuna Fire District
      Kuna Development Services
      Kuna City Clerk
      Kuna City Trash Department
      Kuna School District
      Kuna City Water Department
      Idaho Power
      Nampa & Meridian Irrigation District

   The following agencies responded and had no objection:
   Tesoro Logistics

   C. The following agencies responded and made comments:
      Boise Project Board of Control – Need to protect 25 feet out and parallel to the uppermost shoulder of the channel for federal easement. Local irrigation/drainage ditches that cross this property, in order to serve neighboring properties, must remain unobstructed and protected by an appropriate easement.

1. There is no access to Federal or State lands or waters that will be denied if the requested vacation is approved.

2. On December 3, 2015 a letter was sent out notifying all the property owners within 300 feet of the requested vacation of the public hearing date.
3. The public hearing for the vacation and abandonment of the above referenced public Right of Way will be conducted on January 6, 2016.

4. Attached for Commission review and consideration is Resolution Number 2126 (Attachment 3).

5. Approval of the vacation and abandonment is subject to retention of the public and private utility easements, drainage easements, irrigation easements, and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

6. Costs associated with relocation or replacement of existing easements and facilities shall be borne by the applicant with approval of the applicable utility or agency.

FISCAL IMPACT

The required application fee of $1000.00 was waived.
The considered value is $41,188.

POLICY IMPLICATIONS

The public hearing and the vacation procedures were accomplished according to current ACHD policies.

RECOMMENDATIONS

Staff recommends that the Board of Commissioners adopt and sign Resolution Number 2126 and the president of the board sign the quitclaim deed (Attachment 4) to vacate Indian Creek Street located in the NW ¼ of the NW ¼ of Section 25, Township 2 North, Range 1 West, and being that part of Indian Creek Street of AVALON ADDITION as shown in Book 5 of Plats at Page 239 in the office of the Recorder, Ada County, Idaho.

ATTACHMENTS:

1. Application for vacation-No Application, Internal

2. Depiction of proposed vacation parcel and exchange area

3. Resolution Number 2126

4. Quitclaim Deed to Ada County Highway District

cc: Right of Way File
RESOLUTION NUMBER 2126

AUTHORIZING AN ABANDONMENT/VACATION OF PUBLIC RIGHT OF WAY BY AND BETWEEN THE ADA COUNTY HIGHWAY DISTRICT AND Ada County Highway District, WITH OTHER CONSIDERATIONS BETWEEN THE PARTIES.

WHEREAS, by its Resolution Number 2123 adopted and approved at its regular meeting held on December 2, 2015, the Ada County Highway District Commission, in accordance with the requirements of Idaho Code, section 40-1309 and 40-203, found that Indian Creek Street located in the NW ¼ of the NW ¼ of Section 25, Township 2 North, Range 1 West, and being that part of Indian Creek Street of AVALON ADDITION as shown in Book 5 of Plats at Page 239 in the office of the Recorder, Ada County, Idaho, and more particularly described in Exhibit "A" hereinafter "subject public right of way") was no longer useful to ACHD, and set a public hearing before the Commission for 12:00 pm, on January 6, 2016, at which time any person could appear to show cause why the subject public right of way should not be vacated, and

WHEREAS, in accordance with Idaho Code, sections 40-203 and 40-1309, the Commission does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. Date of Application: Internal request- no fee.

2. Upon the filing of a petition by the Petitioner for the abandonment/vacation and exchange of the subject public right of way, the following organizations and agencies were notified on November 4, 2015:
   A. Ada County Highway District Staff members;
   B. All appropriate local agencies and utilities were contacted and comments requested.

3. On December 2, 2015 a public hearing date was set by the Board of Commissioners for January 6, 2016.

4. Following the filing of the petition for the abandonment/vacation, property owners within 300 feet of the subject right of way were notified by certified mail on December 3, 2015, of the time, date and place of the public hearing.

5. In accordance with Idaho law, a Notice of Public Hearing was published in the Idaho Statesman a daily newspaper published in Ada County, Idaho, on the 22nd, 23rd, and 30th of December, 2015, and a confirmation email of publication was received by the Ada County Highway District and is on file in the office of the Right of Way Department.
6. Any and all comments received from the November 4, 2015 notification of Ada County Highway District Staff members and all applicable local agencies are on file in the office of the Right of Way Department and are included within the Public Hearing staff memo dated November 19, 2015.

7. Any and all comments, received from those property owners of real property within 300 feet of the subject right of way are on file in the office of the Right of Way Department and are included within the Public Hearing staff memo dated December 3, 2015.

8. At the public hearing on Wednesday, January 6, 2016, oral and or written testimony was presented and at the conclusion of which, President Jim D. Hansen, closed the public hearing for testimony. After discussion, the Commission found the abandonment/vacation and exchange was in the public's best interest and voted to approve the abandonment/vacation and exchange of the two permanent easements as an even exchange in value.

CONCLUSIONS OF LAW:

It is the opinion of the Board of Commissioners of the Ada County Highway District, per President Jim D. Hansen, and Commissioners, Sara M. Baker, Rebecca W. Arnold, Kent Goldthorpe, and Paul Woods that the subject right of way is no longer needed by the Ada County Highway District and that it is the best interest of the traveling public, the adjacent property owners, and the Ada County Highway District that the abandonment/vacation of Indian Creek Street located in the NW ¼ of the NW ¼ of Section 25, Township 2 North, Range 1 West, and being that part of Indian Creek Street of AVALON ADDITION as shown in Book 5 of Plats at Page 239 in the office of the Recorder, Ada County, Idaho, and more particularly described in Exhibit "A" be approved and the subject public right of way abandoned/vacated. Subject to the following:

Retention of public and private utility easements, drainage easements, irrigation easements and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

NOW, THEREFORE, BE IT RESOLVED, pursuant to Idaho Code section 40-203 and 40-1309 that the proposed abandonment/vacation of the public right of way is hereby authorized, and ACHD staff is hereby directed to negotiate a contract of sale with Petitioner in the amount of Zero Dollars and Zero Cents ($0.00) and that the President of the Commission and the Director be, and are hereby, authorized and directed to execute such contract of sale on behalf of the Ada County Highway District and an appropriate Quitclaim Deed for the abandoned/vacated subject public right of way and such closing instructions and other instruments and documents as are required by such contract of sale, including the following, and deliver the same, together with the deed to the closing agent:

1. Subject to retention of public and private utility easements, drainage easements,
irrigation easements and/or other easements of record or not of record or in use upon or under said described public right of way and/or the provisions for the relocation or replacement of existing facilities.

Costs associated with relocation or replacement of existing easements and facilities shall be borne by the Petitioner with approval of the applicable utility or agency.

BE IT FURTHER RESOLVED, that only upon the District's receipt of full payment of all applicable charges, costs and fees and any other amounts owing and the deed for the Exchange Parcel from the Petitioner within ninety (90) days of the date of approval, shall this Resolution be recorded in the county records.

BE IT FURTHER RESOLVED, that if District has not received full payment of all applicable charges, costs and fees and any other amounts owing and the deed for the Exchange Parcel from the Petitioner within one hundred twenty (120) days of the date of approval, the Board of Commissioners may, at a public hearing and upon thirty (30) days notice of said public hearing to the Petitioner by certified mail and adjacent property owners by regular mail, declare the abandonment/vacation and exchange void and issue a resolution declaring the same.

ADOPTED AND APPROVED by the Board of Commissioners of the Ada County Highway District at its regular meeting held on this ____, day of __________________, 2016.

ADA COUNTY HIGHWAY DISTRICT
BOARD OF COMMISSIONERS

By: _______________________________________
   Jim Hansen, President

By: _______________________________________
   Sara M. Baker, Vice President

By: _______________________________________
   Rebecca W. Arnold, Commissioner

By: _______________________________________
   Kent Goldthorpe, Commissioner

By: _______________________________________
   Paul Woods, Commissioner
ATTEST:

____________________________________
Bruce S. Wong, Director

STATE OF IDAHO
 )
 ) ss.
County of Ada
 )

On this _____ day of ___________________, 2016, before me, a notary public in and for said State, personally appeared President, Jim D. Hansen, Commissioners, Sara M. Baker, Rebecca W. Arnold, Kent Goldthorpe, and Paul Woods, and known to me to be the Board of Commissioners, respectively, of the Ada County Highway District and that they executed this instrument on behalf of said Highway District for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

____________________________________
Notary Public for the State of Idaho
Residing at Boise, Idaho
My Commission Expires: ____________________

The Ada County Highway District (ACHD) is committed to compliance with Title VI of the Civil Rights Act of 1964 and related regulations and directives. ACHD assures that no person shall on the grounds of race, color, national origin, gender, disability or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any ACHD service, program or activity.
QUITCLAIM DEED CONVEYING PUBLIC RIGHT OF WAY

THIS INDENTURE, made this ___ day of _______________, 2016, Ada County Highway District, a body politic and corporate of the State of Idaho, the "GRANTOR", and Ada County Highway District, the "GRANTEE";

WITNESSETH:

FOR VALUE RECEIVED, GRANTOR does by these presents convey, remise, release and forever quitclaim unto GRANTEE all right, title and interest of GRANTOR in the real property situated in the COUNTY OF ADA, STATE OF IDAHO, as more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Right-of-Way").

SUBJECT TO easements of record, statutory rights of utilities and districts to be in the public right-of-way which rights are being exercised in the Right-of-Way as of the date of this Indenture (for sewer, gas, water or similar pipelines and their appurtenances, for electrical and telephone lines and for irrigation and drainage ditches), and subject to licenses for telecommunications lines which are in place in the Right-of-Way as of the date of this Indenture. GRANTEE is responsible for costs of any relocation or replacement of such pipelines, lines and ditches.

TO HAVE AND TO HOLD the same unto the GRANTEE and to its successors and assigns forever.

The current address of GRANTEE is:

Ada County Highway District
3775 Adams St.
Garden City, ID 83714
IN WITNESS WHEREOF, this Quitclaim Deed has been duly executed by and on behalf of GRANTOR this _____ day of __________________, 2016.

ADA COUNTY HIGHWAY DISTRICT

By ______________________
President

Attest:

____________________
Bruce S. Wong, Director

State of Idaho    )
    ) ss.
County of Ada    )

On this _____ day of __________________, in the year 2016, before me, ________________________, a Notary Public in and for the State of Idaho, personally appeared Jim D. Hansen, known or identified to me to be the President of the Board of Commissioners of the Ada County Highway District, and Bruce S. Wong, known or identified to me to be the Director of the Ada County Highway District, the persons who executed this instrument on behalf of said Highway District for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above-written.

____________________
Notary Public for the State of Idaho
Residing at __________________, Idaho
My Commission expires: __________________