# RESOLUTION NO. 2013-247

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING AND AUTHORIZING THE EXECUTION OF A CONSTRUCTION AND MAINTENANCE AGREEMENT BETWEEN THE STATE OF FLORIDA AND ST JOHNS COUNTY FOR THE STATE ROAD A1A SCENIC AND HISTORIC COASTAL BYWAY SIGNS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the intent of Local Agency Agreement is to allow St. Johns County to construct and maintain the State Road A1A Scenic and Historic Coastal Byway Signs through the Florida Department of Transportation Local Agency Program.

WHEREAS, the State of Florida Department of Transportation (the "DEPARTMENT"), and St. Johns County (the "COUNTY") desire to enter into the Construction and Maintenance Agreement; and

WHEREAS, Construction and Maintenance Agreement is attached and incorporated to this Resolution; and

WHEREAS, the COUNTY has reviewed the terms, provisions, and requirements of the Construction and Maintenance Agreement, and has determined that accepting the terms of the Agreement, will service the interests of the County.

# NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

- **Section 1.** The above recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.
- Section 2. The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of the attached Construction and Maintenance Agreement between the State of Florida, Department of Transportation and St. Johns County, Florida, and authorizes the County Administrator, or designee, to execute the Agreement, on behalf of the County.
- **Section 3.** The Board of County Commissioners authorizes the County Administrator, or designee, to execute any other paperwork associated with, or necessary to accomplish, the overall goal set forth in the Agreement.

Section 4. To the extent that there are typographical or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

**Section 5.** This Resolution shall become effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this  $\frac{19^{H}}{2}$  day of  $\frac{1}{2}$  day of  $\frac{1}{2}$ 

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

ATTEST:

BY:

Deputy Clerk

John H. Morris---Chair

RENDITION DATE 11/21/13





# Florida Department of Transportation

RICK SCOTT GOVERNOR 1109 South Marion Avenue Lake City, FL 32025-5874 ANANTH PRASAD, P.E. SECRETARY

October 21, 2013

The Honorable Jay Morris, Chair St. Johns County Board of County Commissioners 500 San Sebastian View St. Augustine, Florida 32084

Subject: CONSTRUCTION & MAINTENANCE AGREEMENT (REVISED)

SR A1A Scenic & Historic Coastal Byway

from the St. Johns County Line to the Volusia County Line

Financial Project ID: 432850-1-52-01

#### Chair Morris:

Enclosed are two (2) copies of the Construction & Maintenance Agreement for the subject project. Your assistance is requested to secure execution by St. Johns County.

In addition to executing the attached Agreement, a resolution must be adopted and a certified copy attached to each copy of the Agreement.

Your assistance in securing execution as soon as possible is appreciated. Should you have questions or need additional information, I can be reached at 1-800-749-2967, Extension 7533.

Sincerely,

Kathy Thomas

District Two Program Management Engineer

Kattyn O. Thomas

KT:dj Enclosures

CC: Mr. Youngman Roberts, P.E., St. Augustine Maintenance Engineer

Mr. Nick Perpich, P.E., St. Johns County Project Manager

Financial Project Id. No. 432850-1-52-01

Federal Id. No. 4913-012-P

Project Description: SR A1A Scenic & Historic Coastal Byway

from the Duval County Line to the Flagler County Line On System Department Construct Agency Maintain

#### **CONSTRUCTION & MAINTENANCE AGREEMENT**

THIS CONSTRUCTION & MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and St. Johns County, Florida ("Agency").

#### -RECITALS-

- 1. The term "Property" shall refer to certain real property located in St. Johns County, Florida, owned by the Department and described as SR A1A Scenic & Historic Coastal Byway from the Duval County Line to the Flagler County Line, as shown in **Exhibit "A"**; and
- 2. The term "Improvement" means and shall refer to installation of 32 vehicular directional signs and 15 custom place signs shall be in St. Johns County as shown in **Exhibit "A"**; and
- 3. The Agency has requested that the Improvement be constructed and the Department is amenable to this request pursuant to the terms and conditions of this Agreement; and
- 4. The Department shall fund construction of the Improvement, which is wholly contingent upon appropriation of funds to the Department; and
  - 5. The Department shall construct the Improvement; and
  - 6. The Improvement shall be located on the Property; and
  - 7. The Agency shall operate, maintain, and repair the Improvement; and
- 8. By Resolution \_\_\_\_\_ dated \_\_\_\_\_, the Agency authorized its representative to execute and enter this Agreement on behalf of the Agency, see **Exhibit "B"**.

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the above recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

### 1. RECITALS AND EXHIBITS

The above recitals and attached Exhibits are specifically incorporated by reference and made part of this Agreement.

#### 2. EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement.

#### 3. E-VERIFY

The Agency (A) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and (B) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

# 4. COMPLIANCE

The Agency shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection Agency,

Financial Project Id. No. 432850-1-52-01

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Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

#### 5. PERMITS

In the performance of the Agreement the Agency may be required to obtain one or more Department permits which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such Department permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the Department. Should any term or provision of the Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of the Agreement shall control unless specifically noted otherwise in any such Department permit. For purposes of this Agreement, the term "permit" shall also include the Department's Construction Agreement which may be required for permanent improvements installed within the Department's right-of-way.

#### 6. PROJECT MANAGEMENT

The Department shall manage the Project for the design and construction of the Improvement and perform such activities as the Department deems necessary and appropriate to complete the Project for the Improvement, including, without limitation, seeking and obtaining approval and participation by one or more federal agencies, design of the Improvement, acquisition of right-of-way, construction of the Improvement, and any other activities to facilitate satisfactory completion of the Improvement. The Department shall commence construction of the Improvement at its convenience after the appropriation of sufficient funds.

# 7. OPERATION, MAINTENANCE & REPAIR

A. The Agency shall operate, maintain and repair the Improvement at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. Nothing in this Agreement shall obligate the Department to maintain or repair the Improvement, said obligations to remain the sole responsibility of the Agency.

- B. If the Department determines that the Agency is not maintaining and repairing the Improvement in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.
- C. If the deficiency is not corrected timely, or if the Department determines that the deficiency remains after receipt of the Agency's written notice indicating that the deficiency has been corrected, the Department, within its discretion, may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to complete correction of the deficiency; (2) require the Agency to remove the Improvement and restore the Property pursuant to the "Removal" section of this Agreement; or (3) correct the deficiency at the Agency's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the Agency with an invoice for the costs incurred by the Department to correct the deficiency and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.
- D. If at any time in the sole determination of the Department, the integrity or safety of the Improvement requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall provide the Agency with written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

# 8. IMPROVEMENTS & MODIFICATIONS

A. The Department may require the Agency to improve or modify the Improvement if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications will benefit the Department in the conduct of its business.

- B. Required improvements and modifications shall be subject to the terms and provisions of this Agreement, specifically including, without limitation, the "Operation, Maintenance & Repair" section hereof.
- C. Improvements and modifications shall be constructed and completed by the Agency within sixty (60) days of the date of the Department's written notice requiring improvements or modifications.

The Agency shall be responsible for locating, removing and relocating utilities, both aerial and underground, if required for the Agency to perform this Agreement. The Agency shall ensure all utility locations are accurately documented on the construction Plans and Specifications, including the final asbuilt plans. All utility conflicts shall be resolved by the Agency directly with the applicable utility

# 10. MAINTENANCE OF TRAFFIC

A. The Agency shall be responsible for the maintenance of traffic ("MOT") at all times during its performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of the Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; and (3) the Department's Roadway Design Standards Index 600 Series.

B. If the Agency fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the Agency's sole cost and expense. Should the Department perform MOT, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

#### 11. REMOVAL

A. The Department may require the Agency to remove the Improvement and restore the Department Property to such condition as required by the Department if the Department determines: (1) the Improvement is not maintained in accordance with Governmental Law; (2) removal of the Improvement is required by applicable Governmental Law; (3) the Agency breaches a material provision (as determined by the Department) of this Agreement, or (4) removal of the Improvement will benefit the Department in the conduct of its business. Removal and restoration shall be completed by the Agency within sixty (60) days of the date of the Department's written notice requiring removal of the Improvement, or such other time as the Department and the Agency mutually agree in writing.

- B. Removal and restoration shall be completed by the Agency in accordance with all applicable Governmental Law.
- C. Should the Agency fail to complete the removal and restoration work as required herein, the Department may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to complete removal and restoration; or (2) complete the removal and restoration at the Agency's sole cost and expense. Should the Department elect to complete the removal and restoration, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

# 12. PERMISSIVE USE

This Agreement creates a permissive use only and neither the granting of permission to use the Department Property or the Improvement on or within the Department Property shall operate to create or vest any property right to or in the Agency. The Agency shall not acquire any right, title, interest or estate in the Department Property by virtue of the execution, operation, effect or performance of this Agreement.

# 13. EMINENT DOMAIN AND DAMAGES

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest or estate entitling the Agency to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of

property for public purposes. The Agency forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by the Agency, as a result of the Department's exercise of any right provided in this Agreement.

#### 14. DUE DILIGENCE & WARRANTIES

A. All due diligence requirements related to the Agency's negotiation, execution and performance of this Agreement are the sole responsibility of the Agency.

B. The Department makes no representations or warranties of any kind, express or implied, concerning the Department Property, including, without limitation, representations and warranties concerning: (1) the physical condition of the Department Property; and (2) merchantability or fitness for a particular purpose.

#### 15. PAYMENT

All Department invoices submitted to the Agency for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Florida Statutes, until paid in full.

#### 16. INDEMNIFICATION

A. To the extent allowable by law the Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

#### 17. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time.

#### 18. NOTICE

All notices, communications and determinations between the parties hereto and those required to be given under this Agreement, including, without limitation, any change to the notification address set forth below, shall be in writing and shall be sufficient if mailed by registered or certified mail to the parties at the following addresses:

Department: Florida Department of Transportation

Attention: Youngman Roberts, P.E.

3600 DOT Road

St. Augustine, Florida 32284

Financial Project Id. No. 432850-1-52-01

Federal Id. No. 4913-012-P

Project Description: SR A1A Scenic & Historic Coastal Byway

from the Duval County Line to the Flagler County Line On System Department Construct Agency Maintain

- and -

Florida Department of Transportation Attention: Chief Counsel District Two

1109 South Marion Avenue, Mail Station 2009

Lake City FL 32025

Agency: The Honorable Jay Morris, Chair

St. Johns County Board of County Commissioners

500 San Sebastian View St. Augustine, Florida 32084

Agency agrees that if it fails to notify Department by certified mail of any changes to its notification address. Agency shall have waived any defense based on Department's failure to notify Agency.

#### 19. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

## 20. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of the Agreement.

#### 21. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Agency and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

# 22. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

#### 23. ASSIGNMENT

The Agency shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform the Agreement.

24. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

# 25. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have Financial Project Id. No. 432850-1-52-01 Federal Id. No. 4913-012-P

Project Description: SR A1A Scenic & Historic Coastal Byway

from the Duval County Line to the Flagler County Line On System Department Construct Agency Maintain

independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

#### 26. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

#### 27. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

### 28. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

#### 29. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

#### 30. INTERPRETATION

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

#### 31. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

#### 32. SEVERANCE

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, Agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

#### 33. COMPUTATION OF TIME

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

#### 34. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

### 35. ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties execute this Agreement, consisting of ten (10) pages.

Florida Department of Transportation	Attest:	
Ву:	Ву:	
Printed Name:	Printed Name:	
Title:	Title:	
Date:	Date:	
Legal Review:		
By: Office of the General Counsel Florida Department of Transportation		
St. Johns County	Attest:	
Ву:	Ву:	
Printed Name:	Printed Name:	
Title:	Title:	
Date:	Date:	
Legal Review:		
By: Legal Counsel for Agency		

#### **EXHIBIT "A"**

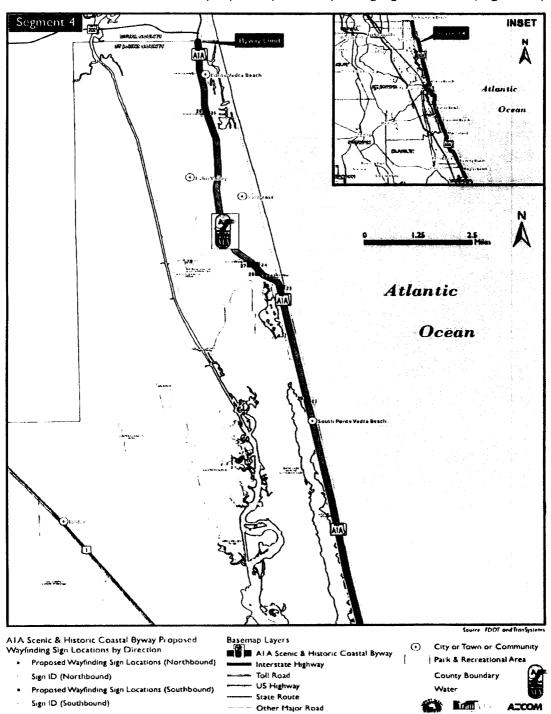
# (PROPERTY DESCRIPTION)

This project involves installation of 32 vehicular directional signs and 15 custom place signs shall be in St. Johns County.

Segment 3 Atlantic Ocean ATA Scenic & Historic Coastal Byway Proposed Wayfinding Sign Locations by Direction Basemap Layers City of Town or Community AIA Scenc & Historic Coastal Byway Proposed Wayfinding Sign Locations (Northb Interstate Highway Sign ID (Northbound) Toll Road US Highway Proposed Wayfinding Sign Locations (Southb Sign 1D (Southbound) ACCOM Other Major Road

ATA Scenic & Historic Sastal Byway - Proposed Wayfinding Sign Locations (Segment 3)

# ATA Scenic & Historic Wastal Byway - Proposed Wayfinding Jign Locations (Segment 4)



**EXHIBIT "B"** 

(RESOLUTION)