

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 16, 2017

Consent
 Workshop

Regular
 Public Hearing

Department: Engineering & Public Works
Submitted By: Engineering & Public Works
Submitted For: Roadway Production Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) receive and file the assignment and assumption of contract between Southeast Highway Guardrail & Attenuators, LLC (SHGA) and Southeast Attenuators, Inc. (SAI) dated March 17, 2017; and
- B) approve a retroactive payment to SHGA for tasks performed under the annual guardrail contract R2016-0845 with SAI after the acquisition of SAI by SHGA on July 5, 2016.

SUMMARY: Approval will allow SHGA to be paid for past work orders performed by SHGA under contract R2016-0845. Payment is for work done by SHGA after they acquired SAI and is expected to be approximately \$80,600. Countywide (LBH)

Background and Justification: On May 3, 2016, Palm Beach County (County) received bids for the annual guardrail contract, project number 2016050. The contract, R2016-0845, was signed by SAI on June 8, 2016. On July 12, 2016, the Board of County Commissioners (BCC) approved contract R2016-0845 with SAI for annual guardrail contract services on a task order basis. In September, SAI notified the County that SHGA had acquired the assets of SAI on July 5, 2016. SHGA is currently the only annual guardrail contractor for Palm Beach County and it is critical that they be compensated and allowed to continue to provide these services, therefore, the Deputy County Engineer consents to the contract assignment and recommends approval of payment.

Attachments:

- 1. Bill of Sale and Assignment Assumption Agreement dated July 5, 2016
- 2. Assignment and Assumption of Contract dated March 17, 2017
- 3. Consent to Assignment Memo

Recommended by: _____

S. J. Wohl
Department Director

5/3/17
Date

Approved by: _____

Kare Johnson
Assistant County Administrator

5/5/17
Date

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

This Bill of Sale and Assignment and Assumption Agreement (this "Agreement"), dated as of July 5, 2016, is made by and between SOUTHEAST ATTENUATORS, INC., a Florida corporation ("Southeast Attenuators"), BRITCO SIGN MANUFACTURING, INC., a Florida corporation ("BritCo", and collectively with Southeast Attenuators, "Sellers"), SOUTHEAST HIGHWAY GUARDRAIL & ATTENUATORS, LLC, a Delaware limited liability company ("SHGA"), and SOUTHEAST HIGHWAY SIGNS, LLC, a Delaware limited liability company ("SHS", and collectively with SHGA, "Buyers").

Sellers and Buyers are parties to that certain Asset Purchase Agreement, dated as of the date herof (as may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, the "Purchase Agreement"), pursuant to which Sellers have agreed to sell to Buyers, and Buyers have agreed to purchase from Sellers, all of Sellers' right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement) and, in connection therewith, Buyers have agreed to assume the Assumed Liabilities (as defined in the Purchase Agreement). Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Purchase Agreement.

The parties hereto, therefore, hereby agree as follows:

1. Sale and Assignment.

(a) Upon the terms and subject to the conditions of this Agreement and the Purchase Agreement, (i) Southeast Attenuators hereby sells, assigns, transfers, conveys and delivers to SHGA, and SHGA hereby accepts from Southeast Attenuators, free and clear of any Encumbrances other than Permitted Encumbrances, all of Southeast Attenuators's right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement), and (ii) SHGA hereby assumes the Assumed Liabilities (as defined in the Purchase Agreement) and agrees to timely pay, perform and discharge in entirety the Assumed Liabilities (as defined in the Purchase Agreement), in each case in accordance with the terms of the Purchase Agreement. Notwithstanding anything to the contrary, Southeast Attenuators does not hereby sell, assign, transfer, convey or deliver to SHGA, and SHGA does not hereby purchase and acquire from Southeast Attenuators, any of Southeast Attenuators's rights, title or interest in or to any asset other than the Purchased Assets (as defined in the Purchase Agreement).

(b) Upon the terms and subject to the conditions of this Agreement and the Purchase Agreement, (i) BritCo hereby sells, assigns, transfers, conveys and delivers to SHS, and SHS hereby accepts from BritCo, free and clear of any Encumbrances other than Permitted Encumbrances, all of BritCo's right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement), and (ii) SHS hereby assumes the Assumed Liabilities (as defined in the Purchase Agreement) and agrees to timely pay, perform and discharge in entirety the Assumed Liabilities (as defined in the Purchase Agreement), in each case in accordance with the terms of the Purchase Agreement. Notwithstanding anything to the contrary, BritCo does not hereby sell, assign, transfer, convey or deliver to SHS, and SHS does not hereby purchase and acquire from BritCo, any of BritCo's rights, title or interest in or to any asset other than the Purchased Assets (as defined in the Purchase Agreement).

2. Further Assurances; Specific Enforcement. Upon the request of any of Sellers or Buyers, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by

this Agreement. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

3. Terms of the Purchase Agreement. Nothing contained in this Agreement shall be deemed to modify, limit, expand, supersede, or amend any rights or obligations of Sellers or Buyers under the Purchase Agreement. To the extent of any inconsistency or conflict between any of the terms and provisions of this Agreement and any of the terms and provisions of the Purchase Agreement, the terms and provisions of the Purchase Agreement shall govern and control.

4. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign its rights or obligations hereunder without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed.

5. Entire Agreement. This Agreement, together with the Purchase Agreement, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

6. Severability. Any provision of this Agreement that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision hereof or the invalid or unenforceable provision in any other situation or in any other jurisdiction. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule of any jurisdiction.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

9. Amendment and Modification. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SELLERS:

SOUTHEAST ATTENUATORS, INC.

By: Debra Ricci
Name: Debra Ricci
Title: President

BRITCO SIGN MANUFACTURING, INC.

By: Brittany Ricci
Name: Brittany Ricci
Title: President

BUYERS:

SOUTHEAST HIGHWAY GUARDRAIL
& ATTENUATORS, LLC

By: _____
Name: Barry S. Snyder
Title: Chief Executive Officer

SOUTHEAST HIGHWAY SIGNS, LLC

By: _____
Name: Barry S. Snyder
Title: Chief Executive Officer

[Bill of Sale and Assignment and Assumption Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SELLERS:

SOUTHEAST ATTENUATORS, INC.

By: _____

Name: _____

Title: _____

BRITCO SIGN MANUFACTURING, INC.

By: _____

Name: _____

Title: _____

BUYERS:

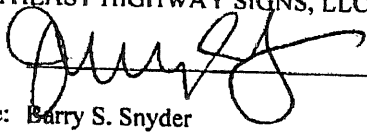
SOUTHEAST HIGHWAY GUARDRAIL
& ATTENUATORS, LLC

By:  _____

Name: Barry S. Snyder

Title: Chief Executive Officer

SOUTHEAST HIGHWAY SIGNS, LLC

By:  _____

Name: Barry S. Snyder

Title: Chief Executive Officer

[Bill of Sale and Assignment and Assumption Agreement]

ASSIGNMENT AND ASSUMPTION OF CONTRACT

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT (this "Assignment") is made and entered into as of March 17, 2017 by and between **SOUTHEAST ATTENUATORS, INC.**, a Florida corporation ("Assignor") and **SOUTHEAST HIGHWAY GUARDRAIL & ATTENUATORS, LLC**, a Delaware limited liability company ("Assignee").

BACKGROUND

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement by and among Assignor and Assignee, among others, dated July 5, 2016 (the "Asset Purchase Agreement") whereby Assignor sold, assigned, transferred and conveyed to Assignee and Assignee's affiliates certain assets of Assignor; and

WHEREAS, in connection with the Asset Purchase Agreement, Assignor desires to assign, and Assignee desires to assume, that certain Maintenance Contract No. 2016050 between Assignor and Palm Beach County dated July 12, 2016 in the amount of \$556,198.75 (the "Contract").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Assignor and Assignee agree as follows:

AGREEMENT

1. Assignment. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title, duties, obligations and interest in and to the Contract.
2. Assumption. Assignee hereby accepts the foregoing assignment by Assignor and assumes each and every term, covenant and condition of the Contract including all liabilities, obligations and entitlement to payment of Assignor under the Contract.
3. Counterparts and Facsimile Signatures. This Assignment may be executed in counterparts. Each executed counterpart of this Assignment shall constitute an original document, and both executed counterparts, together, shall constitute the same agreement. Any counterpart evidencing a signature by a party that is delivered by electronic mail by such party to the other party hereto shall be binding as an original on the sending party when such electronic mail is sent.

[SIGNATURE PAGE FOLLOWS]

*Original
Attachment 2
Page 1 of 2*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Contract as of the date first written above.

ASSIGNOR:

SOUTHEAST ATTENUATORS INC.

Debra Ricci, President
Debra Ricci, President

ASSIGNEE:

SOUTHEAST HIGHWAY GUARDRAIL &
ATTENUATORS

By: [Signature]
Name: Barry S. Snyder
Title: CEO



INTEROFFICE MEMORANDUM

**Department of Engineering
and Public Works**

P.O. Box 21229
West Palm Beach, FL 33416-1229
(561) 684-4000
FAX: (561) 684-4050
www.pbcgov.com




**Palm Beach County
Board of County
Commissioners**

- Paulette Burdick, Mayor
- Melissa McKinlay, Vice Mayor
- Hal R. Valeche
- Dave Kerner
- Steven L. Abrams
- Mary Lou Berger
- Mack Bernard


County Administrator

Verdenia C. Baker

*"An Equal Opportunity
Affirmative Action Employer"*

 printed on recycled paper

TO: Liz Herman
Assistant County Attorney

FROM: Tanya N. McConnell, P.E. 
Deputy County Engineer

DATE: May 2, 2017

RE: Annual Guardrail Contract Assignment Consent

On July 5, 2016 Southeast Highway Guardrail & Attenuators, LLC (SHGA) acquired the assets of Southeast Attenuators, Inc. (SAI). The County Engineering and Public Works Department consent is required for the assignment and assumption of the Annual Guardrail Contract between SHGA and SAI dated March 17, 2017.

I consent to the assignment and assumption of the contract between SHGA and SAI dated March 17, 2017.