

RESOLUTION 2012-065

RESOLUTION AUTHORIZING THE AWARD OF A CONTRACT  
WITH AN ESTIMATED COST BETWEEN \$2,625.00 AND \$17,500.00  
WITHOUT PUBLIC ADVERTISING FOR BIDS

WHEREAS, the "Local Public Contracts Law" provides that except for contracts which require the performance of professional services, all contracts or agreements which do not require public advertising for bids and the estimated cost or price is between \$2,625.00 and \$17,500.00, two (2) or more competitive quotations as to cost or price, whenever practicable, shall be solicited by the contracting agent, and the contract or agreement shall be made with and awarded to the lowest responsible bidder; and

WHEREAS, The Bordentown Sewerage Authority has solicited from the following bidders the respective quotations as to the price:

<u>BIDDER</u>	<u>PRICE</u>
Coyne Chemical Company	\$5,454.90 (\$2.75 per pound)
BASF Corporation	\$11,939.40 (\$6.03 per pound)

for the following goods or services:

**1,983.6 Pounds of BASF Zetag 7563 Polymer (36 – 55.1 Pound Bags)**

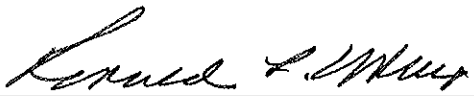
WHEREAS, a Certificate of Availability of Funds has been provided by the designated certifying finance officer and is attached hereto.

NOW, THEREFORE, BE IT RESOLVED, this 20<sup>th</sup> day of August, 2012, that a contract, be and the same is hereby awarded to:

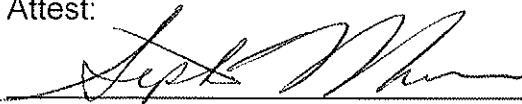
**Coyne Chemical Company**

in the amount of \$5,454.90 (\$2.75 per pound), for the goods or services described above.

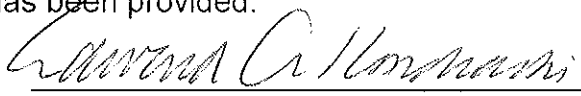
THE BORDENTOWN SEWERAGE AUTHORITY

By:   
Ronald L. Marino, Chairman

Attest:

  
Nancy A. Liberman, Secretary  
*Stephen Mousou, Asst*

I have reviewed this Resolution and the Certificate of Availability of Funds and am satisfied that an appropriate Certificate of Availability has been provided.

  
Edward A. Kondracki, Esquire  
General Counsel

**CERTIFICATE OF AVAILABILITY OF FUNDS**

I, Richard D. Eustace, Executive Director and Certifying Finance Officer of The Bordentown Sewerage Authority, do hereby certify, pursuant to the rules of the Department of Community Affairs, Division of Local Government Services (N.J.A.C. 5:34-5.1 et seq.), that there are available adequate funds for the following proposed contract:

CONTRACT: Provide 1,983.6 Pounds of BASF Zetag 7563 Polymer  
(36 – 55.1 Pound Bags)

CONTRACTOR: Coyne Chemical Company

CONTRACT AMOUNT: \$5,454.90

BUDGETARY LINE ITEM: 01-003-660A

I certify that the same funds have not been certified as available for more than one pending contract.

8/20/12

Date

*Richard D. Eustace*

Richard D. Eustace  
Certifying Finance Officer

BORDENTOWN SEWERAGE AUTHORITY

QUOTATION RECORD FORM

PROJECT Polymer

DEPT/APPROV. \_\_\_\_\_

ITEM OR SERVICE: BASF Zetag 7563, 36-55.1 lb bags,  
1983.6 lbs total.

SOLICITED BY:  Phone \_\_\_\_\_ Letter \_\_\_\_\_ In Person \_\_\_\_\_ Newspaper \_\_\_\_\_

Quotes not sought \_\_\_\_\_ )  
Not awarded to lowest price \_\_\_\_\_ ) Statement of explanation  
\_\_\_\_\_ ) on reverse side

Vendor: Coyne Chemical Response (time and method) \_\_\_\_\_  
Price \$2.75/pound, \$5,454.90 for 36 bags Delivery \_\_\_\_\_  
Special Terms Total price based on 55.1 lb. bags

Vendor: BASF Response (time and method) \_\_\_\_\_  
Price \$6.03/pound, \$11,939.40 for 36 bags Delivery \_\_\_\_\_  
Special Terms Total price based on 55 lb bags

Vendor: \_\_\_\_\_ Response (time and method) \_\_\_\_\_  
Price \_\_\_\_\_ Delivery \_\_\_\_\_  
Special Terms \_\_\_\_\_

Vendor: \_\_\_\_\_ Response (time and method) \_\_\_\_\_  
Price \_\_\_\_\_ Delivery \_\_\_\_\_  
Special Terms \_\_\_\_\_

AWARDED TO: Coyne Chemical TERMS: \_\_\_\_\_  
COST: \$5,454.90 SPECIAL COMMENTS: \_\_\_\_\_  
PURCHASE ORDER # \_\_\_\_\_

SOLICITATION PERFORMED BY OR UNDER SUPERVISION OF:

Tom Bedwood  
(SIGNATURE OF CONTRACTING AGENT)

DATE: 8/9/12

CUSTOMER# BORD30  
 Bordentown Sewerage Authority  
 P.O. Box 396  
 954 Farnsworth Avenue  
 Bordentown, NJ 08505

DATE: August 8, 2012

**QUOTATION**  
 PAGE 1 OF 1

GEORGE S. COYNE CHEMICAL CO., INC.  
 3015 State Road, Croydon, PA 19021-6997  
 (215) 785-3000: Order entry, (215) 785-1585: Fax

SHIP TO ADDRESS: WWTP (Same)

ATTENTION: Tom Redwood

PHONE: 609-291-9105

FAX: 609-291-9079

PRODUCT DESCRIPTION	PRODUCT NO.	PACK AGE SIZE	CONTAINER DEPOSIT	QUANTITY PER DELIVERY	
				72 bags (2 pallets)	36 bags (1 pallet)
Zetag 7563 Polymer	90076055	55.1# bag	-	\$263.00/cwt	\$275.00/cwt
				(\$2.63/#)	(\$2.75/#)
Designated Carrier: Coyne    Delivery Day Territory: M-F    Shipping Location: Croydon Pricing is subject to change without notice unless a blanket order or contract is entered into. <b>PAYMENT TERMS: NET 30 DAYS.</b> <b>F.O.B. DELIVERED, UNLESS OTHERWISE SPECIFIED.</b> cwt = 100 pounds				<b>GEORGE S. COYNE CHEMICAL CO., INC.</b> Environmental Services Group <hr/> Paul J. Devine, Chemical Application Specialist	



The Chemical Company

*BASF Corporation · 100 Campus Drive  
Florham Park, NJ, 07932*

*Bordentown Sewage Authority  
P.O. Box 396  
954 Farnsworth Avenue  
Bordentown, New Jersey 08505*

09 August 2012  
Performance Chemicals  
Water Solutions, North America  
EV/WN

ATTENTION: *Tom Redwood*

REFERENCE: **PRICE QUOTATION FOR BASF® Zetag 7563™**

Dear Mr. Redwood:

BASF Corporation is pleased to present for your consideration the pricing information requested regarding the Product specified on the attached price list.

We hope that we will have the opportunity to serve your needs and look forward to your favorable reply.

If any questions concerning this proposal arise, please do not hesitate to contact our Suffolk, Virginia office:

**BASF Corporation, Performance Chemicals-Water Solutions  
2371 Wilroy Road  
Suffolk, Virginia 23434-0820  
800/677-4224**

Very truly yours,

BASF Corporation – Water Solutions, North America

Charles S. Wright  
Sales Manager  
Municipal Direct Business – North America  
Performance Chemicals - Water Solutions

CSW/rd

cc: Chris Kessler

BASF Corporation  
100 Campus Drive  
Florham Park, NJ 07932

Bordentown Swg Auth - CK1222265RD



The Chemical Company

Quote No. CK1222265RD

09 August 2012

ATTN: Tom Redwood  
Bordentown Sewage Authority  
P.O. Box 396  
954 Farnsworth Avenue  
Bordentown, New Jersey 08505

Dear Mr. Redwood:

Recently you requested pricing information from BASF, please find below our quotation.

Product	Package	Net Wt. (lb)	Price (USD/lb)	Additional Information (Quantity Requirements, etc.)
Zetag 7563	Bags	55	6.03/lb	36 bags to full pallet (1980 lb)

Conditions:

VALIDITY: This quotation is valid if accepted or confirmed within thirty (30) days of quotation date.  
PRICE: The price quoted herein is effective on date shown above until 09 February 2013.  
TAX: All prices are exclusive of any taxes required.  
PAYMENT: All payments are due net thirty (30) days from the date of the invoice.  
DELIVERY: The price quoted above is FOB; origin. Freight term for this price quotation is prepaid. Freight cost is in the cost of the product .

Under normal conditions, standard lead time to ship for orders is five business days. For orders placed after 12:00 PM (eastern), lead time will start on the next business day. Additional charges may apply for expedited orders.

TERMS: All product sales are subject to BASF Corporation General Terms of Sale, which are attached. This quote is not a confirmation of any sales order. This quote is submitted for your information on a confidential basis, and is done so with the understanding that you will not disclose the submission or the terms of this quote to any third party.

If you have any questions concerning this quotation, please don't hesitate to contact your account manager.

Name: Chris Kessler

Phone: (610) 937-1787

Email: [chris.kessler@basf.com](mailto:chris.kessler@basf.com)

Thank you again for your interest in our products and services. We look forward to having the opportunity to service your chemical needs.



The Chemical Company

## BASF - GENERAL TERMS AND CONDITIONS OF SALE

1. **Entire Agreement.** These Terms and Conditions of Sale (the "Terms"), together with other sales terms, if any, agreed to by Buyer and Seller in a writing ("Sales Terms"), contain the entire and exclusive agreement between the parties regarding the sale of each Product. The Terms, together with the Sales Terms, if any, are referred to herein as the "Contract". If there is a conflict between the Terms and the Sales Terms, the Sales Terms shall govern. All terms and conditions contained in any prior or subsequent oral or written communication, including, without limitation, terms and conditions contained in Buyer's purchase order, which are different from or in addition to the Contract are hereby rejected and shall not be binding on Seller, and Seller hereby objects thereto. No addition to, or alteration or modification of, the Contract shall be valid unless made in a writing signed by an authorized representative of each party specifically referring to the Contract. Any action by Buyer in furtherance of a sale or purchase of Product shall constitute acceptance of the Contract.

2. **Payment; Taxes.** The price for Product is the price in effect on the date of shipment, unless otherwise agreed by the parties. Seller may adjust the price of any Product upon at least ten (10) days prior notice. If any such adjustment with respect to any Product shall be unacceptable to Buyer, and Buyer shall notify Seller to that effect in writing within fifteen (15) days after receipt by it of notice of such adjustment, this Agreement shall terminate as of the effective date of the proposed price change insofar as it relates to such Product. Payment for the full amount of each invoice shall be made to Seller, addressed as indicated on an invoice, in United States currency. All claims by Buyer shall be made by written notice to Seller in accordance with the provisions of Section 6 of these Terms, and no offset or deduction from any invoice is permitted. Acceptance by Seller of bank draft, check, or other media of payment is subject to immediate collection of the full face amount thereof.

In addition to the purchase price, Buyer shall pay Seller any and all governmental taxes, charges or duties of every kind (excluding any tax based upon Seller's net income or net worth) that Seller may be required to collect or pay upon sale, transfer or shipment of Product ("Tax"). Notwithstanding the above, Seller shall not collect, and Buyer shall not pay, any such Tax for which Buyer furnishes to Seller a

properly completed exemption certificate or a direct payment permit certificate. Buyer shall be responsible for any Tax, interest and penalty, if such exemption certificate or direct payment permit certificate is disallowed by the proper taxing authority.

3. **Breach; Termination.** If Buyer breaches any term of the Contract or any other contractual obligation in favor of Seller, (a) Seller may choose to defer any or all further shipments or other performance under the Contract and performance of any other contractual obligation in favor of Buyer until Buyer cures its breach, or (b) Seller may immediately terminate the Contract if Buyer fails to cure such breach within ten (10) days after receipt of written notice from Seller describing such breach. In the event of a termination, all outstanding payment obligations or other indebtedness of Buyer to Seller shall be due and payable no later than fifteen (15) days after delivery of notice of termination. Acceptance by Seller of less than the full amount due shall not be a waiver of any of Seller's rights under the Contract or applicable law.

Notwithstanding any provision in the Contract, Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to Buyer unless Buyer is fully in compliance with its payment and other obligations under the Contract and any other contractual obligation in favor of Seller. In addition, in the event that Buyer fails to make any payment when due, Seller shall have the right to offset any and all outstanding payment obligations or other indebtedness of Buyer to Seller against any outstanding payment obligations or other indebtedness that Seller or any of its affiliates may owe Buyer.

4. **Force Majeure.** Neither Seller nor Buyer shall be responsible for any delay or failure to make or take delivery of Product due to any cause beyond its reasonable control, including without limitation (a) fire, storm, flood, strike, lockout, accident, act of war or terrorism, riot, civil commotion, embargo, (b) any regulation, law, order or restriction of any governmental department, commission, board, bureau, agency, court, or other similar government instrumentality ("Governmental Authority"), or (c) inability of Seller to obtain any required raw material, energy source, equipment, labor or transportation, at prices and on terms Seller deems practicable from Seller's usual sources of supply.



The Chemical Company

Neither party is subject to any liability to the other for failing to perform during the period such inability exists. Without limiting the generality of the foregoing, under no circumstances shall Seller be obligated to purchase Product from a third party for delivery to Buyer in the event of a force majeure. Quantities so affected may, at the option of either party, be eliminated from the Contract without liability, but the Contract shall remain otherwise unaffected. A party's obligation to render timely payment shall not be excused by this provision.

5. **Compliance with Laws.** Seller shall provide or make available to Buyer a Material Safety Data Sheet (MSDS) for each Product. The MSDS contains Product information and describes precautions, if required, associated with such things as transportation, delivery, unloading, discharge, storage, handling and use of the Product. Buyer will familiarize itself with all such information and precautions, including but not limited to safety and health information contained in MSDSs or otherwise transmitted to Buyer by Seller at any time. Buyer will instruct its personnel, agents, contractors, customers or any third party who may be exposed to the Product about such information and precautions, and make copies available to such parties. Buyer assumes full liability and responsibility for compliance with the MSDS. In addition, Buyer shall comply with all applicable laws, statutes, ordinances and regulations of any Governmental Authority including, without limitation, the Foreign Corrupt Practices Act, the anti-money laundering provisions of the USA Patriot Act and Bank Secrecy Act, and United States export control laws ("Applicable Laws"). Buyer shall not resell or ship to persons on the Denied Parties List or persons located within embargoed countries (in both cases as defined under the referenced export control laws). Seller assumes no liability for Buyer's failure to comply with Buyer's obligations arising under European Union REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals) Regulations. Buyer shall defend, indemnify and hold harmless Seller from and against all claims, demands, causes of action, damages, losses, liabilities, costs, expenses (including reasonable attorneys' fees), penalties, and judgments (each, a "Claim") arising out of or related to (i) Buyer's (or others') processing, transportation, delivery, unloading, discharge, storage, handling, sale or use of any Product (or any product containing Product) or (ii) Buyer's violation of any Applicable Laws. Seller assumes no liability for failure of discharge implements or unloading equipment used by Buyer, whether or not supplied by Seller.

6. **Warranties.** SELLER WARRANTS THAT AT THE TIME OF DELIVERY (I) PRODUCT IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND SECURITY INTERESTS; AND (II) PRODUCT COMPLIES WITH SELLER'S PUBLISHED SPECIFICATIONS (OR AS OTHERWISE REFERENCED IN THE CONTRACT). SELLER MAKES NO OTHER WARRANTY OR

GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

BUYER SHALL INSPECT THE PRODUCT SUPPLIED HEREUNDER IMMEDIATELY AFTER DELIVERY. EXCEPT WITH RESPECT TO CLAIMS FOR SHORTAGES, BUYER'S FAILURE TO GIVE NOTICE TO SELLER OF ANY CLAIM WITHIN THIRTY (30) DAYS AFTER THE DATE OF DELIVERY SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THE PRODUCT AND A WAIVER BY BUYER OF ALL CLAIMS WITH RESPECT THERETO.

CLAIMS FOR SHORTAGES MUST BE RECEIVED BY SELLER IN WRITING WITHIN FORTY-EIGHT (48) HOURS AFTER DELIVERY OF PRODUCTS. SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INSPECT ANY SHIPMENT CLAIMED BY BUYER TO CONTAIN A SHORTAGE.

ANY TECHNICAL ADVICE FURNISHED OR RECOMMENDATION MADE BY SELLER OR ITS REPRESENTATIVE CONCERNING ANY USE OR APPLICATION OF ANY PRODUCT IS BELIEVED TO BE RELIABLE BUT SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ITS ACCURACY OR COMPLETENESS OR OF THE RESULTS TO BE OBTAINED. WITH REGARD TO ANY HANDLING OF ANY PRODUCT, BUYER ASSUMES FULL RESPONSIBILITY FOR QUALITY CONTROL, TESTING AND DETERMINATION OF SUITABILITY OF PRODUCT FOR ITS INTENDED APPLICATION OR USE.

7. **Intellectual Property.** Seller warrants that the process or processes of manufacture of the Product and the Product itself do not infringe any valid U.S. patents.

Since Seller has no control over Buyer's (or others') processing, sale, use, or disposition of any Product (or any product containing Product), including, without limitation, the admixing, reacting or combining of any Product with other products, chemicals or materials, Buyer assumes the entire liability and responsibility therefor and agrees to defend, indemnify and hold harmless Seller from and against all Claims arising out of or related to infringement of any third party's intellectual property rights, patents on processes practiced by Buyer or patents on products made by Buyer.

8. **Limitation of Liability.** SELLER'S TOTAL LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION





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ASSOCIATED WITH THE CONTRACT, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED TO REPLACEMENT OF NONCONFORMING PRODUCT OR PAYMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCT FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. SUCH EXCLUDED INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES INCLUDE LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF USE, OR ANY OTHER INDIRECT DAMAGE OR LOSS OF ANY KIND OR CHARACTER TO BUYER, ITS CUSTOMERS, OR OTHER PERSONS OR ENTITIES. ANY ATTEMPT TO REMEDY OR CORRECT A CLAIMED DEFECT BY PERSONS OR ENTITIES NOT AUTHORIZED TO PERFORM SUCH WORK BY SELLER OR CONTINUED USE OF SUCH PRODUCT SHALL VOID THE PRODUCT WARRANTY SET FORTH IN SECTION 6(H) ABOVE AND BUYER IS DEEMED TO HAVE ACCEPTED THE PRODUCT AS IS, WITH NO FURTHER OBLIGATION OF SELLER TO BUYER. IF REQUESTED BY SELLER, BUYER SHALL RETURN THE NONCONFORMING PRODUCT TO SELLER STRICTLY IN ACCORDANCE WITH SELLER'S WRITTEN INSTRUCTIONS CONCERNING SHIPPING, HANDLING, INSURANCE, AND OTHER MATTERS AS TO WHICH SELLER ISSUES INSTRUCTIONS. FAILURE TO COMPLY WITH THESE PROVISIONS SHALL INVALIDATE ANY CLAIM BY BUYER FOR BREACH OF WARRANTY.

9. Limitation of Action. BUYER'S FAILURE TO COMMENCE ANY CAUSE OF ACTION RELATED TO THE PRODUCT OR OTHERWISE ARISING UNDER THE CONTRACT WITHIN ONE YEAR AFTER THE DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ANY OTHERWISE APPLICABLE STATUTE OF LIMITATIONS AND FOREVER BAR ALL RIGHTS TO COMMENCE ANY CAUSE OF ACTION WITH RESPECT THERETO.

10. Allocation. Seller may allocate its available supply of Product among its customers, itself, and its affiliates on such basis as Seller deems fair and reasonable if Seller is unable, for any reason, to supply the quantities of Product contemplated by the Contract.

11. Credit. If at any time the financial responsibility of Buyer, or the credit risk involved, shall become unsatisfactory to Seller, Seller may require cash or satisfactory security prior to subsequent shipments or deliveries hereunder. The election by Seller to require such cash or security shall not affect the obligation of Buyer to take and pay for the

contracted Product. Buyer agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any sum payable by Buyer to Seller. Seller shall be entitled to interest on any overdue sum at the maximum rate allowed by applicable law.

12. Title; Risk of Loss. Unless otherwise provided in the Contract (e.g., an INCOTERM), risk of loss of Product shall transfer at Seller's plant of manufacture. In addition, unless otherwise provided in the Contract, title to Product shall transfer to Buyer simultaneously with risk of loss.

13. Precious Metals. With respect to Products containing precious metals, unless otherwise specifically agreed to in writing, the following sales conditions shall also apply:

(a) All metal accounts established or maintained by Seller shall be subject to Seller's Metal Account Terms and Conditions, the current form of which appears on each metal account statement;

(b) Payment for precious metals shall be cash in advance;

(c) The precious metal contained in such Products shall be priced in accordance with the Engelhard Fabricated Products Price next published by Seller following the date the metal is shipped or credited to Buyer's metal account;

(d) Seller shall have the right at any time without notice to set off any liability (whether to pay money or to credit, deliver, or transfer metal or otherwise) of Seller to Buyer against any liability of Buyer to Seller and, in furtherance thereof, to convert metal to money or money to metal at market value at the date of such set-off.

14. Admixture Products. With respect to concrete admixture Products, Buyer shall provide, and agrees to be solely responsible for providing, a secondary containment system around/under the Product storage tanks designed to prevent migration of Product into environmental media. Buyer shall comply with all federal, state and local laws and regulations relating to secondary containment, and Buyer shall be solely responsible and liable for any failure to provide secondary containment around/under the Product storage tanks or any release of Product into the environment.

15. Assignment; Survival. Buyer shall not assign all or any portion of the Contract without Seller's prior written consent. The Contract shall bind and inure to the benefit of the successors and permitted



The Chemical Company

assigns of the respective parties. In order that the parties may fully exercise their rights and perform their obligations arising under the Contract, any provisions of the Contract that are required to ensure such exercise or performance (including any obligation accrued as of the termination date) shall survive the termination of the Contract.

16. Governing Law; Miscellaneous. The Contract shall be governed by the laws of the State of New Jersey, USA, excluding its conflict of laws principles. The parties agree, consent and waive contest to the exclusive jurisdiction and venue of the federal or state courts of New Jersey for all disputes arising out of or relating to this Contract. The United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended, shall not apply to the Contract. Failure of either party to exercise any right it has under the Contract on one occasion shall not operate or be construed as a waiver by such party of its right to exercise the same right on another occasion or any other rights it has. Any waiver must be in a writing signed by the waiving party. If any provision of the Contract shall be adjudicated to be invalid or unenforceable, it is the parties' intent that the remaining provisions of the Contract will remain in full force and effect, and the affected provision or portion thereof will be deemed modified so that it is enforceable to the maximum extent permissible to reflect as closely as possible the intentions of the parties as evidenced from the provisions of the Contract. The section headings used herein are intended for convenience of reference only and shall not be considered in interpreting the Contract. Nothing in the Contract shall be construed as creating any direct or beneficial right in or on behalf of any third party.