

# City of Bayard

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## CITY OF BAYARD WASTEWATER TREATMENT PLANT PROJECT AGREEMENT

### RECITALS

A. Bayard intends to obtain federal, state or other grant funding ("Grant") to assist with the construction of certain infrastructure improvements to the Bayard Regional Wastewater Treatment Plant ("WWTP") for purposes of increasing its capacity and assuring its ability to meet applicable regulatory and permit requirements ("Project").

B. The Grant is expected to require a cash match ("Match"), the cost of which would likely be absorbed by WWTP customers, including residents in Bayard, Santa Clara and Hurley.

C. The WWTP produces treated effluent which is currently transported to Chino's tailings facility for disposal ("Reclaimed Water").

D. The Project may enable the WWTP to produce additional and/or higher-quality Reclaimed Water able to be utilized in certain applications under applicable regulations. Chino is interested in acquiring the right to purchase all Reclaimed Water that may be produced by the WWTP after completion of the Project.

E. Chino is willing to provide funds up to one million dollars (\$ 1 to meet the Match requirement to facilitate the completion of the Project in exchange for a right of first refusal for the Reclaimed Water, conditioned on Bayard meeting certain progress milestones towards completion of the Project ("Milestones").

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. Recitals. The foregoing Recitals are hereby made a part of this Agreement.
2. Grant Funding. Bayard will be responsible for all aspects of securing Grant funding, administering the Grant(s), and all aspects of Project design, engineering, permitting, completion, and maintenance.
3. Milestones. The Parties will meet annually for Bayard to provide Chino an update on the progress of the Project, and to set progress Milestones for the upcoming year. A reasonable cure period will be allowed in the event Bayard fails to meet a Project Milestone, but is making reasonable progress, in Chino's reasonable discretion.
4. Chino Matching Funds. Chino will provide funds up to a total of one million dollars

(\$ 1,000,000), to meet Match requirements of Grant(s) Bayard secures for the Project within three (3) years from the date of execution of this Agreement, provided Bayard meets the Milestones, to be disbursed as follows:

(a) Three hundred thousand dollars (\$300,000) upon the award of Grant funds to Bayard for the Project ("Initial Payment").

(b) Three hundred thousand dollars (\$300,000) on the first (1<sup>st</sup>) anniversary of the Initial Payment.

(c) Four hundred thousand dollars (\$400,000) on the second (2<sup>nd</sup>) anniversary of the Initial Payment.

(d) If the total amount of Match required by the Grant(s) is less than one million dollars (\$ 1,000,000), the total amount of Chino Matching Funds will be reduced to equal the total amount of Match funds required, and the above payment schedule will be adjusted accordingly.

5. Grant Requirement. Bayard shall proceed in compliance with all aspects of the Grant requirements to develop the Project and shall meet any milestones and requirements of the Grant, which will be incorporated as additional Milestones to be timely achieved in compliance with this Agreement.

6. Termination. If Bayard is unable to meet a Milestone, and any cure period has lapsed, Chino may elect to terminate this Agreement.

7. Right of First Refusal. In the event the Project is completed and the WWTP produces and makes available for sale Reclaimed Water, Chino shall have a right of first refusal ("ROFR") for all such available quantities of Reclaimed Water produced by the WWTP that Chino may elect to purchase, in its sole discretion. Bayard shall provide Chino a written notice of its ability to sell Reclaimed Water, and the class of Reclaimed Water under applicable regulations, at least ninety (90) days before Reclaimed Water first becomes available ("Availability Notice"). If Bayard has received a bona fide, written offer or offers from an unrelated third-party ("Offer") to purchase Reclaimed Water from the WWTP, Bayard shall provide Chino a copy of the Offer(s) with the Availability Notice. If no Offer(s) has been received, Bayard shall propose a purchase price for the Reclaimed Water in the Availability Notice reflecting fair market value.

If Chino elects to exercise the ROFR, Chino shall notify Bayard within thirty (30) days of receipt of the Availability Notice ("Chino Notice"), and the Parties shall negotiate a written contract for the purchase and sale of the Reclaimed Water ("Contract") in good faith with the objective of executing the Contract prior to the Reclaimed Water being available. The price for the Reclaimed Water shall be the highest price proposed in any Offer provided with the Availability Notice, or, if no Offer has been provided, the price shall be the Purchase Price proposed by Bayard reflecting the fair market value of the Reclaimed Water ("Purchase Price"). However, Chino may dispute the Purchase Price by providing written notice to Bayard in the Chino Notice, in which event the Parties shall negotiate in good faith to agree upon the Purchase Price. If the Parties cannot reach agreement on the Purchase Price, the Parties shall by mutual agreement, select one independent

valuation individual or firm qualified to value Reclaimed Water in New Mexico ("Appraiser"), and the Appraiser shall determine the fair market value of the Reclaimed Water, which value shall be used as the Purchase Price. Chino shall bear the costs of the valuation if the valuation is equal to or greater than one hundred percent (100%) of the purchase price proposed by Bayard; otherwise, Bayard shall bear the costs of the valuation.

8. Governing Law. The Parties' respective rights and obligations hereunder shall be governed by and construed in accordance with laws of the State of New Mexico without regard to conflicts of laws principles.

9. Regional Water Project. The conditions of this Agreement are contingent upon the completion of the Grant County Regional Water Project initiated by the local governments.

10. Cooperation. Each Party will act in good faith in implementing this Agreement and shall provide such cooperation required to obtain any permits or approvals required, and to comply with relevant laws, rules, or regulations.

11. Disputes. The Parties shall first attempt to resolve any disputes under this Agreement by informal negotiation before initiating litigation.

12. Amendment. This Agreement may only be amended via a written document signed by both Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year first above written.

**FREEPORT-MCMORAN CHINO MINES**  
A New Mexico General Partnership

By: FREEPORT-MCMORAN CHINO, INC., a  
Delaware corporation, Its General Partner

**By:** \_\_\_\_\_

Randy Ellison, Its President

By: Chino Acquisition LLC, a Delaware limited  
liability company, Its General Partner

**By:** \_\_\_\_\_

Randy Ellison, Its President

**CITY OF BAYARD**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_