

ORIGINAL

RESOLUTION 2012 - 34

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYSIDE, WASHINGTON, AUTHORIZING THE CITY MANAGER
TO EXECUTE A SETTLEMENT AND COMPROMISE OFFER
WITH DARIGOLD**

WHEREAS, the City of Sunnyside and Darigold have agreed upon terms set forth in the Settlement and Compromise Offer made under ER 408 attached hereto as Exhibit "A"; and

WHEREAS, Darigold has agreed that the reading of the City of Sunnyside meter is accurate; and

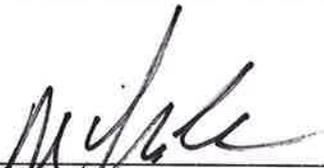
WHEREAS, the City Council finds and determines that authorizing the City Manager to execute said Settlement and Compromise Offer is in the best interest of the residents of the City of Sunnyside and will promote the general health, safety and welfare;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, AS FOLLOWS:

Section 1. That the City Council hereby approves the Settlement and Compromise Offer attached hereto as Exhibit "A" and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside and to take all actions reasonable and necessary to administer performance of such agreement.

Section 2. That this resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 23rd day of April, 2012.



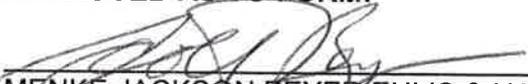
MIKE FARMER, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



MENKE JACKSON BEYER EHLIS & HARPER, LLP
Attorneys for the City of Sunnyside



April 5, 2012

John Kenley
Assistant General Counsel
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Seattle, Washington 98124
206-286-6725

Mr. Scott Beyer
MENKE JACKSON BEYER EHLIS HARPER & PLANT, LLP
807 N. 39th Avenue
Yakima, WA 98902

RE: Water, Wastewater Charges & Associated Costs Dispute
SETTLEMENT & COMPROMISE OFFER MADE UNDER ER 408

Dear Mr. Beyer:

This Settlement and Compromise Offer ("Offer") is submitted by Darigold, Inc. to the City of Sunnyside and is intended to be protected from evidentiary use under Washington Rule of Evidence 408. Darigold appreciates the City's willingness to consider settling this matter without the undue costs of litigation.

Darigold's Offer is to pay to the City of Sunnyside \$56,664 in consideration for the City's agreement to enter into a legally binding agreement with Darigold settling and releasing Darigold from any and all liability relating to water and wastewater fees, charges, and associated costs of any kind (including but not limited to taxes and interest) allegedly incurred or owed by Darigold to the City of Sunnyside prior to December 16th, 2011. Darigold understands that the City may not be authorized to settle any state tax amounts owed by Darigold and thus such state taxes, if any, will be Darigold's responsibility to pay in addition to the settlement amounts paid to the City of Sunnyside.

For explanatory purposes, and without limiting the inclusive nature of the settlement as stated in the preceding paragraph and without waiving any rights or defenses that might be available to Darigold if this matter is not ultimately settled and litigation occurs, Darigold's itemized review of the settlement amount is as follows:

EXHIBIT "A"

SETTLEMENT & COMPROMISE OFFER MADE UNDER ER 408

CONFIDENTIAL

ITEM DESCRIPTION	CHARGES	CITY TAX	TOTAL
WATER USAGE	\$ 42,878.27	\$ 2,572.70	\$ 45,450.97
WASTEWATER USAGE	\$ 10,578.64	\$ 634.72	\$ 11,213.36
TOTAL			\$ 56,664.33

This Offer is subject to acceptance by the signature of an authorized representative of the City of Sunnyside on the signature line provided below. If this Offer is accepted, the parties further agree to diligently draft and sign a legal document materially reflecting the terms stated in paragraph 2 herein, and such document will include Darigold's agreement to pay the agreed to settlement amount within 10 days from the date such document is fully executed by the parties.

This Offer will terminate on Friday, April 21st, 2012 at 5 pm PST.

Darigold appreciates the City's willingness to come to a resolution regarding this matter, and further, Darigold appreciates the mutually beneficial relationship that exists between the City and Darigold. We very much hope to maintain a strong relationship with the City moving forward and this Offer is made in light of that goal.

Sincerely,



John Kenley

Accepted by:

City of Sunnyside

Authorized Representative Signature:

Authorized Representative Title:

Interim City Manager

Date:

Per Resolution 2012-____; Approved 4/23/12