

RESOLUTION 2012 - 35

ORIGINAL

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON,
APPROVING SETTLEMENT AGREEMENT AND AUTHORIZING THE
INTERIM CITY MANAGER TO EXECUTE SUCH AGREEMENT AND
ADMINISTER PERFORMANCE OF THE SAME**

WHEREAS, the City Council at its regular meeting on April 23, 2012, approved a settlement and compromise offer from Darigold, Inc., related to water and waste water fees, charges, and associated costs (including but not limited to taxes and interest) claimed by the City to be owed by Darigold to the City prior to December 16, 2011; and

WHEREAS, the City and Darigold, Inc. have drafted a Settlement Agreement reflecting the terms of the settlement, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the City Council finds and determines that the Settlement Agreement is in the best interest of the City of Sunnyside;

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

Section 1. That the Sunnyside City Council hereby approves the Settlement Agreement with Darigold attached hereto as Exhibit "A" and the Interim 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 as required by law.

PASSED this 14th day of May, 2012.



MIKE FARMER, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



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

SETTLEMENT AGREEMENT

This Settlement Agreement is by and between the CITY OF SUNNYSIDE ("Sunnyside" herein), a Washington municipal corporation, and DARIGOLD, INC., a Washington corporation ("Darigold" herein).

RECITALS

A. Sunnyside operates and is engaged in providing certain utilities, including but not limited to water and sewer services. Sunnyside also collects an occupation and business tax on the gross income derived from selling or supplying domestic water and sewer services.

B. Darigold is provided water and sewer service by Sunnyside. After reviewing its records, Sunnyside asserted that it had a claim for unbilled utility undercharges for water and utility services provided to Darigold, along with taxes due related to such services (collectively "unbilled utility undercharges" herein).

C. Sunnyside and Darigold entered into a Tolling Agreement and Stipulation dated November 23, 2009, with respect to Sunnyside's assertion that it had a claim for unbilled utility undercharges. Subsequent to the Tolling Agreement and Stipulation, the parties exchanged information and have negotiated a settlement of the City's claims for unbilled utility undercharges and any right of offset of Darigold with respect to such unbilled utility undercharges allegedly incurred or owed by Darigold to Sunnyside prior to December 16, 2011.

D. The parties desire to enter into this Settlement Agreement settling and releasing any claims of Sunnyside against Darigold for any unbilled utility undercharges prior to December 16, 2011, and likewise settling and releasing Sunnyside

EXHIBIT "A"

from any claims, if any, of Darigold related to overcharges for water or waste water fees, charges and associated costs of any kind prior to December 16, 2011.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual covenants agreements and stipulations contained herein, the parties covenant and agree as follows:

1. For and in consideration of the payment by Darigold to Sunnyside in the amount of Fifty-Six Thousand Six Hundred Sixty-Four Dollars (\$56,664.00), Sunnyside fully releases and discharges any and all liability of Darigold relating to water and waste water 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 prior to December 16, 2011. Darigold understands that the City may not be authorized to settle any state tax amounts owed by Darigold and that such state taxes, if any, will be Darigold's responsibility to pay in addition to the settlement amounts paid to the City.

2. In consideration of this Agreement, Darigold releases and discharges Sunnyside from in and all liability, if any, related to overcharges for water and waste water fees, charges and associated costs of any kind incurred or owed by Sunnyside to Darigold prior to December 16, 2011.

3. The settlement in the amount of Fifty-Six Thousand Six Hundred Sixty-Four Dollars (\$56,664.00) shall be paid by Darigold to the City within ten (10) days of this Agreement being fully executed by the parties.

4. If any taxes are owed the State of Washington with respect to the amount payable by Darigold to the City under this Agreement, Darigold shall be responsible to pay such taxes and shall hold the City harmless with respect to such taxes, if any.

EXHIBIT "A"

5. The parties agree that, on the date of this Agreement, the City's water meter is accurate and shall be used for purposes of future billing statements by the City to Darigold. Nothing herein shall prohibit Darigold from contesting the accuracy of the City's water meter after the date of this Agreement if and when Darigold has a reasonable basis to do so.

6. This Agreement has been reviewed and approved by each of the parties. In the event it should be determined that any provisions of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for or against any party.

7. This Agreement may be executed in one or more counterparts, and each shall be considered an original when the signatures of all the parties hereto have been obtained.

8. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Washington.

9. This Agreement shall be binding upon and inure to the benefit of the successors and the assigns of the parties.

DATED this _____ day of May, 2012.

CITY OF SUNNYSIDE, a Washington
municipal corporation

By: _____
Frank Sweet, Interim City Manager

EXHIBIT "A"

DARIGOLD, INC., a Washington corporation

By: _____

Its: _____
Duly authorized