

ORIGINAL

RESOLUTION 2009 - 93

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON, APPROVING
TOLLING AGREEMENT AND STIPULATION BETWEEN CITY AND
DARIGOLD CONCERNING UNDERBILLED UTILITY SERVICE**

WHEREAS, representatives from the City and Darigold (also known as Westfarm Foods) have entered into discussions concerning the City's contention that Darigold owes the City charges for water and utility services provided but not billed between July 2006 and November 2007, due to a malfunctioning water meter;

WHEREAS, the City and Darigold have agreed that the statute of limitations applicable to any claim by the City for these unbilled utility undercharges would be tolled effective November 12, 2009, and continuing for a period of ninety (90) days after the effective date of written notice of termination of these discussions;

WHEREAS, the City Council finds and determines that resolving this issue through discussion and without resort to litigation is in the best interest of the City of Sunnyside;

WHEREAS, the City Council finds and determines that approval of such agreement tolling the applicable statute of limitations is in the best interests of 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 "Agreement and Stipulation," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved; and the City Manager is hereby authorized to execute and administer this agreement for and on behalf of the City of Sunnyside.

Section 2. This Resolution shall be effective upon passage, approval and signatures hereon as required by law.

PASSED this 23rd day of November, 2009.



PABLO GARCIA/MAYOR

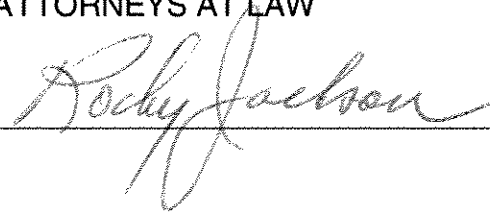
ATTEST:



DELILAH CYR, DEPUTY CITY CLERK

APPROVED AS TO FORM:

MENKE JACKSON BEYER EHLIS & HARPER, LLP
ATTORNEYS AT LAW



TOLLING AGREEMENT AND STIPULATION

This Agreement and Stipulation is by and between the CITY OF SUNNYSIDE ("Sunnyside" herein), a Washington municipal corporation, and DARIGOLD, INC., a Washington corporation, also known as Westfarm Foods ("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 asserts that it has 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 have entered into discussions to determine if there are unbilled utility undercharges owed by Darigold and the amount of unbilled utility undercharges, if any.

D. The parties desire to enter into this Tolling Agreement and Stipulation to toll the applicable statute of limitations with respect to any claim Sunnyside may have for unbilled utility undercharges against Darigold during discussions to determine if there are unbilled utility undercharges arising from water and sewer services provided to Darigold and the amount of such unbilled utility undercharges, if any.

AGREEMENT AND STIPULATION

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

1. The parties hereby stipulate and agree that notwithstanding the application of any statute of limitations, the statute of limitations applicable to any claim of the Sunnyside for unbilled utility undercharges shall be tolled effective November 12, 2009, during discussions between Darigold and Sunnyside and for a period of ninety (90) days after the effective date of written notice of termination of discussions, as herein provided. The time from November 12, 2009, until expiration of ninety (90) days after the effective date of written notice of termination of discussions shall not be deemed or taken as any part of the time limit for the commencement of any action by Sunnyside against Darigold for unbilled utility undercharges.

2. The parties intend to continue discussions and to exchange information and documents regarding unbilled utility undercharges claimed by Sunnyside. Such discussions shall be considered continuing until either party provides the other party with written notice that such discussions are terminated. Such written notice shall not be effective until thirty (30) days after such notice is given. Upon the expiration of ninety (90) days after the effective date of such notice, the statute of limitations applicable to any claim of Sunnyside for unbilled utility undercharges shall no longer be tolled and such time thereafter shall be part of the time limit for the commencement of any action by Sunnyside against Darigold for unbilled utility undercharges.

3. Any notice given by any party shall be effective as of the date of personal service thereof or the date of mailing by certified mail, return receipt requested, postage prepaid, properly addressed to the other party at the following address or as the same may be changed from time to time by written notice to the other party:

EXHIBIT "A"

Sunnyside:

City Manager
City of Sunnyside
818 E. Edison Avenue
Sunnyside, WA 98944-2206

Copy to: MENKE JACKSON BEYER EHLIS & HARPER, LLP
807 N. 39th Avenue
Yakima, WA 98902

Darigold:

Mr. Tom Rouleau
Darigold, Inc.
400 Alexander Road
P.O. Box 876
Sunnyside, WA 98944

Copy to:

Mr. John Kenley
Corporate Counsel
1130 Rainier Avenue South
P.O. Box 34377
Seattle, WA 98124-1377

4. 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.

5. 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.

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

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

EXHIBIT "A"

DATED this _____ day of November, 2009

CITY OF SUNNYSIDE, a Washington
municipal corporation

By: _____
James L. Bridges, Interim City Manager

Attest:

Delilah Cyr, Deputy City Clerk

DARIGOLD, INC., a Washington corporation

By: _____
President

Attest: _____
Secretary