

ORDINANCE NO. 530

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR SALE AND PURCHASE OF WATER PLANT FACILITIES LOCATED IN CLEAR CREEK COUNTY, COLORADO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. That the City of Golden enter into an agreement for sale and purchase of certain water plant facilities located in Clear Creek County, Colorado, with American Metal Climax, Inc., a New York corporation.

Section 2. The agreement to be executed by the City of Golden and American Metal Climax, Inc. shall be as follows:

AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT, made and entered into this 14th day of February, 1964 by and between AMERICAN METAL CLIMAX, INC., a corporation duly organized and existing under the laws of the State of New York, hereinafter referred to as "Company", and the CITY OF GOLDEN, State of Colorado, a municipal corporation, hereinafter referred to as "CITY".

WITNESSETH:

WHEREAS, the City and its duly elected officials, under the obligation and duty imposed upon it to provide an adequate water supply for its taxpayers and inhabitants, has purchased a portion of Priority No. 223A, Water District No. 51, decreed to the Berthoud Canal and the Berthoud Tunnel by the District Court in and for the County of Grand, State of Colorado, which decree was for 53.4 cubic feet of water per second of time for transmountain diversion to the Eastern Slope, and

WHEREAS, the City likewise in the fulfillment of its duty and obligation is negotiating for the acquisition from the Farmers Reservoir and Irrigation Company, a Colorado corporation, the entire balance of said decree, the collection ditch and right of way, and

WHEREAS, water from said decree can fulfill the needs of the City and its inhabitants for the present and future during peaking periods only if the same is placed in storage for availability for City use during such peaking periods, and the City does not at present own any storage reservoirs or facilities, and

WHEREAS, the Company, in connection with its mining and milling operations, is in the process of constructing and will construct a dam to impound 250 acre feet of water in the lower reaches of Woods Creek, Clear Creek County, Colorado, which will hereinafter for convenience be referred to as the lower reservoir, and a dam to impound 570 acre feet of water in the same general area which will hereinafter be referred to as the upper reservoir, together with access roads thereto; and

WHEREAS, the City, by reason of its present needs for facilities for the storage of its transmountain water, desires that the Company construct the upper

reservoir to a present capacity of 700 acre feet in lieu of 570 acre feet to take care of its present needs, and desires to purchase from the Company the lower and upper reservoirs as so enlarged, together with the access roads thereto, and

WHEREAS, the Company is willing to construct the upper reservoir to impound 700 acre feet in lieu of the 570 acre feet which it requires to take care of its needs and to sell to the City its upper reservoir as so enlarged and the lower reservoir and all access roads used in connection therewith, all subject to a certain use thereof in the Company during the purchase period as hereinafter mentioned, and

WHEREAS, the City, through its lawfully constituted City Council, has determined that it not only will be to the best interests of the City and its taxpayers to purchase the said reservoirs and access roads on an installment basis and to pay therefore an adequate consideration in the form of water use in lieu of monetary consideration, but also that the acquisition of said reservoirs and access roads is necessary to provide for the future water supply for the City and can be acquired in this manner at a lesser cost to the taxpayers of the City than would be expended by the City constructing said facilities in full itself;

NOW, THEREFORE, For and in consideration of the mutual promises and agreements herein contained, and for the other good and valuable considerations as set forth herein, the receipt whereof is hereby acknowledged by each of the parties hereto, IT IS HEREBY AGREED by and between the parties as follows:

That the Company does hereby sell, and the City does hereby purchase, the aforesaid reservoirs and access roads, more particularly described in Exhibit "A" attached hereto, upon the following terms and conditions:

1. The Company and City agree to jointly obtain from the proper governmental agency the necessary use permits or easements for the aforesaid reservoir sites and access roads, said permits or easements to be mutually satisfactory to both the Company and the City.

2. The Company agrees to construct said reservoirs and access roads at its sole expense, except as set forth in Paragraph 3 herein.

3. All engineering work for the dams, reservoirs, and their appurtenances shall be furnished by the Company at its sole expense and the dams and their appurtenances shall be built according to the plans and specifications prepared by the engineers for the Company. The City shall have the right to retain an engineer of its own selection at its expense to review and approve all investigations, designs, plans and specifications on the two reservoirs as the work progresses, it being the intent of the parties hereto that all of such work be approved on a step-by-step basis as the said work progresses, rather than to have the approval of the City after said work has been completed. The upper dam shall be

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constructed in such a manner so that the bearing surface is large enough in area at the same elevation to permit an eventual width and height sufficient to give the upper reservoir a net storage capacity of a maximum of 1,250 acre feet of water.

If the City elects by notice in writing to the Company of its decision to increase the present capacity of the upper reservoir to 700 acre feet of water, the upper reservoir shall be so constructed by the Company with the Company paying \$50,000 or 50% of the excess costs of said reservoir over the costs of the 570 acre feet capacity reservoir, whichever is the greater, and the City shall pay the balance of such excess costs. Any amount so paid by the City shall constitute a part of the purchase price.

4. All access roads shall be built and maintained by the Company at its expense, to Forest Service specifications, and shall connect with an access road to the main State or Federal Highway System servicing the immediate vicinity of the reservoirs.

5. The Company shall reimburse the City for all legal expenses incurred by it in connection with the work performed under this contract, the review of the plans and specifications referred to in the contract, all matters connected with the acquisition of the reservoir sites and access roads from the proper federal agencies, and for all legal expenses which are reasonably connected with or related to the subject matter of this contract for sale and purchase.

6. During the term of this purchase contract and any extensions thereof, the Company shall have the right to the use and enjoyment of said reservoirs, roads and facilities, subject to the right of the City to use the roads and facilities for the storage and use of all water in the upper reservoir in excess of 570 acre feet, and the Company during said period, shall, at its sole cost, operate and maintain said reservoirs, access roads and appurtenances, and during said period the Company shall defend and hold harmless the City for any loss that may result to any persons, firm or corporation as a result of the Company's storage and use of the aforesaid water.

7. During the period of this purchase contract and any extension thereof, the Company agrees to not use the upper reservoir for the storage of tailings. The net capacity of the upper reservoir shall be not less than 570 acre feet when possession is delivered to the City.

8. In addition to the amount expended by the City in connection with the enlargement of the upper reservoir from 570 acre feet to 700 acre feet, the City shall pay the balance of the purchase price for said reservoirs, appurtenances thereto, and access roads by furnishing to the Company for a period of twenty (20) years from the date hereof, use of water from transmountain sources and specifically from Priority NO. 223A, and/or other sources, in a quantity, insofar as the same is available to the City from said sources, and subject to administration by the State Engineer, to fill and keep filled the

lower reservoir to its full capacity of 250 acre feet, and to fill and keep filled the upper reservoir to a capacity of 570 acre feet, and in addition thereto, an amount sufficient to permit the Company to consumptively use 500 acre feet per year. All amounts of water stored in the upper reservoir in excess of 570 acre feet shall be for the use and benefit of the City.

If the City is successful in its negotiations for the balance of said Priority No. 223A, then, and in that event only, it is understood and agreed that the rights of the Company in and to the use of the water, which is the subject of this contract, shall be subject to the first and prior right of the City to the following:

May 15 through June 30 - 1 cu. ft. per second

July 1 through July 31 - 2 cu. ft. per second

August 1 through October 15 - 4 cu. ft. per second

9. In consideration of the amount expended by the Company in connection with the enlargement of the upper reservoir and for the consideration of the providing of said water and use for the period of twenty years, the Company, in lieu of cash payment therefor, does hereby sell and will, at the expiration of said twenty year period, convey by special warranty deed, in the form attached hereto as Exhibit "A" to the City, all of the Company's right, title and interest in and to the said upper and lower reservoirs, appurtenances thereto and any interest in access roads owned by the Company at the time of conveyance. During said twenty years, title to said reservoirs, appurtenances and access roads shall be and remain in the Company, subject only to the rights of the United States.

10. The City agrees to pass and adopt the necessary Ordinances to authorize, ratify and approve this Agreement for Sale and Purchase.

11. The Company agrees, on or before February 1, 1965, to deposit in escrow with the Golden State Bank, Golden, Colorado, the deed hereinabove referred to, together with such escrow instructions as are mutually satisfactory to the City and to the Company.

12. The parties hereto agree to execute a notice of agreement for sale and purchase at such time as the parties have mutually agreed upon the legal descriptions of the improvements and appurtenances which are the subject matter of this Agreement.

13. It is mutually agreed and understood that all covenants and agreements herein contained shall inure to the benefit of, extend to and be binding upon the successors and assigns of the respective parties.

14. All notices given pursuant to this Agreement shall be mailed by certified mail, using the following addresses:

American Metal Climax, Inc.
Golden, Colorado
City of Golden
Golden, Colorado

IN WITNESS WHEREOF, the parties

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hereto have hereunto set their hands and seals the day and year first above written.

AMERICAN METAL CLIMAX, INC.

By _____
President

ATTEST: _____

Secretary

CITY OF GOLDEN
By _____
Mayor

ATTEST: _____

Clerk

STATE OF COLORADO :
: ss.

COUNTY OF _____ :
:

The foregoing instrument was acknowledged before me this ____ day of _____, 1964, A.D. by _____, as _____ President, and _____ as Secretary of AMERICAN METAL CLIMAX, INC., a corporation organized and existing under the laws of the State of New York.

My notarial commission expires _____.

WITNESS my hand and official seal.

Notary Public

STATE OF COLORADO :
: ss.

COUNTY OF JEFFERSON :
:

The foregoing instrument was acknowledged before me this ____ day of _____, A.D. 1964 by _____ as Mayor, and _____ as Clerk of the CITY OF GOLDEN, State of Colorado, a Municipal corporation.

My notarial commission expires _____.

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that AMERICAN METAL CLIMAX, INC., a corporation duly organized and existing under and by virtue of the laws of the State of New York, of the first part, for and in consideration of _____

DOLLARS

(\$ _____) in hand paid, hereby sells and conveys to the CITY OF GOLDEN, State of Colorado, a municipal corporation, of the second part, the following property situate in the County of Clear Creek and State of Colorado, to-wit:

A description of property to be

conveyed shall be inserted at the time this special warranty deed is executed and placed in escrow pursuant to the provisions of paragraph 11 of the Agreement for Sale and Purchase attached hereto,

with all its appurtenances; and the party of the first part will warrant and defend the title to the party of the second part, its successors and assigns, against all persons claiming to hold title by, through or under the party of the first part, save and except claims by any agency of the United States government, State of Colorado or the County of Clear Creek, resultant from an involuntary taking by such governmental body or as to the United States government, any other claim unless such taking or claim shall have occurred as a result of a voluntary action, improper or negligent actions or activity or failure to properly act on the part of the party of the first part, in which instance the above warranty shall be in effect and the acceptance of this deed by party of the second part shall not constitute a waiver of any right for damage for breach of warranty or a waiver of any right of legal action therefor.

IN WITNESS WHEREOF, the said party of the first part hath caused its corporate name to be hereunto subscribed by its _____ President, and its corporate seal to be hereunto affixed, attested by its Secretary, this ____ day of _____, A.D. 19____.

AMERICAN METAL CLIMAX, INC.
(SEAL)

By: _____
President

ATTEST: _____

Secretary

STATE OF COLORADO)
: ss.

COUNTY OF _____)
:

The foregoing instrument was acknowledged before me this ____ day of _____, A.D. 19____ by _____ as President and _____ as Secretary of AMERICAN METAL CLIMAX, INC., a corporation, duly organized and existing under the laws of the State of New York.

My notarial commission expires: _____
WITNESS my hand and official seal.

Notary Public

Section 3. The Mayor of the City of Golden is hereby authorized and directed to execute said agreement and the City Clerk of the City of Golden is hereby directed and authorized to attest said execution.

Section 4. Said agreement and the fulfillment of the terms and conditions contained therein are necessary to protect the health and welfare of the Citizens of the City of Golden, Colorado, and to provide additional water facilities for said City and its inhabitants.

Adopted and approved and ordered

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