

CHAPTER III

FINANCES

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ARTICLE I

GENERAL FINANCES

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3-1-1 Fiscal Year Same as Calendar Year

The fiscal year of the Town of Hotchkiss shall commence on the first day of January and end on the last day of December of each year.

3-1-2 Information for Budget- Estimates

Not later than the first day of September of each year the budget committee or other duly authorized persons designated by the Board, shall prepare and submit to the person appointed to prepare the budget estimates of their expenditure requirements and their estimated revenues for the ensuing budget year and shall submit in connection therewith the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year.

3-1-3 Preparation of Budget

On or before the twentieth day of September of each year the persons appointed to prepare the budget shall prepare and submit to the Board a proposed budget for the ensuing fiscal year. The budget as approved by the Board shall be adopted and administered in accordance with the provisions of the Local Government Budget Law of Colorado.

3-1-4 Rate of Tax Levy

The Board of Trustees shall by resolution fix the rate of tax to be levied upon all the taxable property within the Town for municipal purposes and, through the Town Clerk, shall officially certify the said levy to the County Commissioners of Delta County, Colorado prior to the 16th day of October of each year.

FINANCES: General

3-1-5 Annual Appropriation

The Board of Trustees shall pass an ordinance within the last quarter of each fiscal year, to be termed the annual appropriation ordinance for the next fiscal year. In such ordinance the Board shall appropriate such sums of money as are necessary to cover the items in its budget and to defray all necessary expenses and liabilities of the Town, specifying the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose. The total amount appropriated shall not exceed the amounts fixed in the budget adopted by the Board.

3-1-6 Publication of Financial Statements

The Board of Trustees shall, within twenty (20) days after the adjournment of each regular or special meeting, publish in a newspaper of general circulation in the Town, such of its proceeding as relate to the payment of bills, stating for what the same are allowed, the name of the person to whom allowed and to whom paid. It shall also publish a statement concerning all contracts awarded and rebates allowed.

3-1-7 Deposits; Investments

The Town Treasurer shall deposit all of the funds and moneys which come into his possession by virtue of his office as Town Treasurer in one or more responsible banks located in the State of Colorado, which have been designated by written resolution of the Town Board. The Town Board may also authorize the Town Treasurer, by written resolution, to invest all or any part of such finds in securities which are authorized for such investment by State law.

3-1-8 Annual Audit

The Board of Trustees shall select a qualified person as auditor and cause to be made an annual audit of the financial affairs and transactions of the Town in accordance with the requirements of State law.

ARTICLE 2
SALES TAX

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3-2-16	General Provisions and Exemptions
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Sections 2-4	Severability Clause, Savings Clause, Effective Date and Declaration of Emergency

3-2-13 **Purpose.** The purpose of this Ordinance is to impose an additional one percent (1%) sales tax on the sale of tangible property at retail, and the furnishing of services as provided in Section 29-2-105(1)(d), C.R.S. upon every retailer in the Town Of Hotchkiss, Colorado; and pursuant to Section 29-2-111(1), C.R.S., as amended, deposit the proceeds derived from said additional one percent sales tax into a special fund to be known as the Sales Tax Capital Improvement Fund, to be used solely to provide capital improvements.

3-2-14 **Definitions.** For the purpose of this Ordinance, the definitions of words herein contained shall be defined in Section 39-26-102, C.R.S., and said definitions are incorporated herein by this reference.

3-2-15 **Vendor's Fee.** The Vendor(Retailer) shall be entitled as Collection Agent for the Town of Hotchkiss to withhold a collection fee in the amount of three and one-third percent (3 1/31%) from the total amount remitted by Vendor to the Town of Hotchkiss each month. If any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director, the vendor shall not be allowed to retain any amounts to cover his expense in collecting and remitting said tax, and an amount equivalent to the full three and one-third percent (3 1/3%N shall be remitted to the executive director by any such delinquent vendor.

3-2-16 **General Provisions and Exemptions.**

(a) The amount subject to tax under this ordinance shall not include the State Sales and Use Tax imposed by Article 26, Title 39, C.R.S.

(b) For the purpose of this Ordinance, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the Town of Hotchkiss or to a common carrier for delivery to a destination outside the limits of the Town of Hotchkiss.

(c) The gross receipts from sales shall include delivery charges, when such charges are subject to the State Sales and Use Tax imposed by Article 26 of Title 39, C.R.S., regardless of the places to which delivery is made.

(d) In the event a retailer has no permanent place of business in the Town of Hotchkiss, or has more than one place of business, the place or places at which the retail sales are consummated or the purpose of this sales tax shall be determined by the provisions of Article 26 of Title 39, Colorado Revised Statutes, 1973, and by rules and regulations promulgated by the Department of Revenue.

(e) All sales of personal property on which a specific ownership tax has been paid or is Payable shall be exempt from the Town sales tax when such sales meet both of the following conditions :

i. The purchaser is a nonresident: of, or has its principal- place of business outside the Town of Hotchkiss; and

ii. Such personal property is registered or required to be registered outside the limits of the Town of Hotchkiss under laws of the State of Colorado.

(f) in the event the seven percent limitation provided for in Section 29-2-108, C.R.S., is to be exceeded in the Town of Hotchkiss, Colorado, by a proposed county sales or use tax, such limitation shall be exceeded by a stated rate in the Town of Hotchkiss.

3-2-17 Schedule of Sales Tax.

(a) in addition to the one percent (1%) sales tax imposed by Ordinance No. 1-1977, there is hereby imposed on all sales of tangible personal property at retail and the furnishing of services as provided in Section 39-26-1-04 , C.R.S. an additional one percent (1%) for a total of two percent (2%) of the gross receipts. The tangible personal property and services taxable pursuant to this article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-1-04, C.R.S., and subject to the same exemptions as those specified in Section 39-26-114, C.R.S., except the exemption allowed by Section 39-26-111 .L11), C.R.S., for purchases of machinery or machine tools, the exemption of sales and purchases of those items in Section- 39-26-13..4 (t.) (a), XXI) C.R.S., and the exemption for sales of food specified in Section 39-26-13.4 (a) (XX) , C.R.S. The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue or by separate ordinance of the Town of Hotchkiss. I any vendor, during any reporting period, shall collect as a tax an amount in excess of two percent (2%) of his total taxable sales, he shall remit to the Director of Revenue the full amount of the tax herein imposed and also such excess.

(b) The collection, administration and enforcement of this sales tax shall be performed by the Director of Revenue of the State of Colorado in the same manner as the collection, administration and enforcement of the Colorado State Sales Tax. The provisions of Article 26, **Title 39, Colorado Revised Statutes**, as amended hereafter, and all rules and regulations promulgated by the Director of Revenue shall govern the collections, administration and enforcement of the sales tax imposed by this Ordinance.

3-2-18 Election and Amendments.

(a) Before this Sales Tax Ordinance shall become effective, it shall be submitted to and receive the approval of a majority of the qualified electors of the Town of Hotchkiss voting at the general election to be held on the 3rd day of April, 1984.

(b) The Board of Trustees may amend, alter or change this Ordinance, except as to the additional one percent (1%) rate of tax herein imposed, subsequent to adoption by a majority vote of the Board of Trustees. Such amendment, alteration, or change need not be submitted to the electors of the Town of Hotchkiss for their approval.

3-2-19 Sales Tax Capital Improvement Fund Created. Pursuant to Section 29-2-11, C.R.S., as amended:, there is hereby created a Sales Tax Capital Improvement Fund for the deposit of all revenues derived from the imposition of the additional one percent (1%) sales tax as provided herein. All monies deposited with said fund shall be used solely to provide for capital improvements to the Town of Hotchkiss, Colorado.

3-2-20 Penalty. Any person convicted of violating any of the provisions of this Ordinance shall be punished by a fine of not to exceed \$300.00, or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

3-2-21 Effective Date. Upon passage of this Ordinance and subsequent referendum, the sales tax shall apply to all retail sales, unless exempt, made on or after July 1, 1984.

3-2-22 Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or application and to this end the provisions of this Ordinance are declared to be severable.

Section I.

3-2-23 Sales Tax- Non-applicability. For transactions consummated on or after January 1, 1986, the Town's sales tax shall not apply to the sale of construction and building materials, as the term is used in §29-2-109, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town evidencing that a local use tax has been laid or is required to be paid.

3-2-24 Sales Tax Credit for Sales or Use Taxes Previously Paid to Another Municipality. For transactions consummated on or after January 1, 1986, the Town's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the Purchaser or user by another statutory or home rule municipality equal to or in excess of two percent (2%). A credit shall be granted against the Town's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed two percent (2%).

Section 2. Severability Clause. It is hereby declared to the intention of the Board of Trustees that each and every part of this ordinance is severable, and if any term, phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionally or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance since the same would have been enacted by the Board of Trustees without the incorporation in this ordinance of any such unconstitutional or invalid term, phrase, clause, sentence, paragraph or section.

Section 3. Savings Clause. Nothing in this ordinance shall be construed to affect any right, duty or liability under any ordinances in effect prior to the effective date of this ordinance, and the same shall be continued and concluded under such prior ordinances.

Section 4. Effective Date and Declaration of Emergency. This ordinance shall take effect January 1, 1986, and shall apply to transactions consummated on or after said date. In order to comply with the requirements of H.R. 1007 enacted by the Colorado Legislature in 1985, to provide for the orderly continuation of collection of sales tax and to provide for the preservation of public health and safety, this ordinance is adopted as an emergency measure.

ELECTRIC FRANCHISE
(Delta-Montrose Electric Association)

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****NOTE:***

3-2-25 through 3-2-40
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3-2-25

Whenever the word Town is hereinafter employed it shall designate the Town of Hotchkiss, Delta County, Colorado, the Grantor, and whenever the word Association is used, it shall designate not only Delta-Montrose Electric Association, Inc., a Colorado corporation, the Grantee, but also its successors and assigns.

3-2-26

There is hereby granted to the Association the right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate into, within and through said Town all necessary, needful and convenient poles, pole lines, posts, wires, transformers, guy posts and guy wires, apparatus, appliances and works, for the purchase, generation, transmission and distribution of electrical energy, with the right and privilege for the period and upon the terms and conditions hereinafter specified to furnish, sell, and distribute said electrical energy to the Town, and the inhabitants thereof, for light, heat and power or other purposes, by means of conduits, cables, guys, poles with wires strong thereon, or otherwise, on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places in said Town, and on, over, under, along, across and through any extension, connection with or continuation of the same and/or on, over, under, along, across and through any and all such new streets, alleys, viaducts, bridges, roads, lanes and other public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of said Town.

3-2-27

The Association is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the Town and supplying electrical energy to said Town and the inhabitants thereof and in the territory adjacent thereto, and further to trim or cut down such trees and shrubbery and to control the growth of same by chemical means, machinery, or otherwise, as may be reasonably necessary to effect said purpose or purposes, provided, however, that the Association shall so locate its works, transmission and distribution structures, lines, poles, guys, equipment and conduits within said Town as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said streets, alleys or other public ways and places. Should it become necessary for the Association, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, pavement, water main, sewer, or any other public or private improvement, the Association shall repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water main, sewer, or other public or private improvement after the installation of its poles, conduits or other structures.

3-2-28

The Association shall so maintain its structures, apparatus, equipment, poles, wires and conduits as to afford all reasonable protection against injury or damage to persons or property there from, and the Association shall save the Town harmless from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the negligent exercise by the Association of the rights and privileges hereby granted; provided, that the Association shall have had notice of the pendency of any action against the Town arising out of such exercise by the Association of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same.

3-2-29

If at any time it shall be necessary to change the position of any pole, conduit or service connection of the Association to permit the Town to lay, make or change street grades, pavements, sewers, water mains or other Town works, such changes shall be made by the Association at its own expense.

3-2-30

The Town shall have the right, without cost, to use all poles of the Association within said Town for the purpose of stringing wires thereon for its fire alarm and police signal systems; provided, however, the Association assumes and shall be subject to no liability and shall be subject to no additional expense in connection therewith. It is further provided that the use of said poles by said Town shall not interfere in any unreasonable manner with the Association's use of same. The Association shall have the right to make such use of its' poles and other property, other than the uses contemplated in this-ordinance as it deems proper so long as such other use does not interfere with the supplying of electrical energy.

3-2-31

The Association shall furnish electrical energy within the corporate limits of the Town or any addition thereto, to the Town, and to the inhabitants thereof, and to any person or persons or corporation doing business in the Town of any addition-thereto, at the applicable and effective rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, on file with or fixed by The Public Utilities Commission of the State of Colorado, or by any other competent authority having jurisdiction in the premises.

3-2-32

The Association shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

3-2-33

The Association will, from time to time, during the term of this franchise make such enlargements and extensions of its distribution system as the business of the Association and, the growth of the Town justify, in accordance with its Standards for Service, Rules and Regulations, and Service Connection and Extension Policies for electric service concurrently in effect and on file with The Public Utilities Commission of the State of Colorado or other competent authority having jurisdiction in the premises.

3-2-34

The Association, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefore, and the interference with, or alteration of any of the Association's property upon the premises of its customers, as shall be necessary to insure a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefore.

3-2-35

As a further consideration for this franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments or excises upon the conduits, poles, wires or other property of the Association, or other levies that might be imposed, either as a franchise tax, occupation tax, occupancy tax, license tax, inventory tax, permit charge, sales tax, use tax, or for the inspection of meters, poles, conduits or other property of the Association, or otherwise, the Association shall pay to the Town a sum equal to three percent (3%) of its gross revenue derived from the sale of electricity within the corporate limits of the Town for electrical energy furnished for light, heat or power, or other purposes, for electric service furnished it, excluding all revenue received in excess of \$10,000 derived per annum from the sale of electric service rendered to each customer at any one location. Payments shall be made on or before the first day of March of each year for the calendar year next previous, but shall be adjusted for the portions of the calendar years at the beginning and at the end of this franchise. For the purposes of ascertaining or auditing the correct amount to be paid under the provisions of this paragraph, the Town Clerk and/or any committee appointed by the Board of Trustees of said Town shall have access to the books of said Association for the purpose of checking the gross income received from operations within said Town.

3-2-36

This ordinance shall be in full force and effect from and after its passage, approval and publication, as by law required, and after approval by the Colorado Public Utilities Commission, upon acceptance thereof in writing by the Association on or before the tenth day after the said approval by the Colorado Public Utilities Commission, and the terms, conditions and covenants hereof shall remain in full force and effect for a period of twenty (20) years from and after such acceptance thereof by said Association.

3-2-37

All poles, pole lines, posts, wires, transformers, guy posts and guy wires, apparatus, appliances and works, conduits, plants, substations or other materials or objects pertaining thereto, used or placed by the Association within the Town shall be and remain the property of the Association.

3-2-38

Nothing in this ordinance shall be so construed as to prevent the Association from Assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of this ordinance, with the consent of said Town, which said consent shall not be unreasonably withheld.

3-2-39

The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not inconsistent with the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

3-2-40

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

COMMUNITY ANTENNA TELEVISION SYSTEM
(Delta County Telephone Company, Inc.)

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3-2-43	Cancellation and Termination
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3-2-71	Validity: Severability
3-2-72	Repeal
3-2-73	Applicability

A. Agency. Agency means the person, department, or agency designated by the Board of Trustees to act in matters related to CATV.

B. Cable-casting, Origination and Access. Cable-casting means programming (exclusive of broadcast signals) carried on a cable television system.

C. CATV. Community Antenna Television system or cable television system or CATV system means any facility, the primary function of which is either to receive and amplify the broadcast signals of one or more television and radio stations or to provide signals for additional closed circuit programming, and to redistribute such signals to members of the public who subscribe thereto or to whom redistributions of such signals is required by ordinance, by means of wires, cables, conduits, or any other devices which are above, below, on, in or along highways or other public places.

D. Franchise Holder. Franchise holder means the person or company awarded a franchise for the operation of a CATV system in the Town of Hotchkiss, the franchise to be awarded in accordance with the provisions of applicable law, including this ordinance.

E. Converter. Converter means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all appropriate signals delivered at designated dial locations.

F. District. District means the area within which the cable operator will provide service.

G. Basic CATV Service. Basic CATV service means all subscriber services regularly provided by the Company, including the delivery of broadcast signals; and shall include, but not be limited to, the following:

- 1) All signals of over-the-air television broadcasters as required by the F.C.C. to be carried by a community antenna television system as defined by the F.C.C.;

Public, educational, local government, local organization, and leased access channel signals; and

- 3) In case of emergency or disaster, the Company will cooperate fully with the Town to disseminate information to all cable subscribers.
- 4) Additional service as proposed by the Company in its application, or as it may hereafter provide.

H. Subscriber. Subscriber means any person, firm, corporation, or other entity receiving for tiny purpose the service of the Company herein.

i. Streets and Highways. Streets means streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, alleys, all other public right-of-way, and public grounds or waters within or belonging to the Town.

J. Systems. System means the broadband communications facility which is to be constructed, operated, and maintained by the Company within the Town of Hotchkiss. The system shall have a minimum twelve (12) channel capacity.

K. Gross Monthly Subscriber Billing. Gross monthly subscriber billing shall consist of basic monthly service charge, additional outlets, if any, premium service, if any, and installation charges.

3-2-42

Franchise Required: Duration

- A. The Town hereby grants a non-exclusive franchise for the use of the streets and highways within the Town as defined above, for the construction, operation, and maintenance of CATV system. No system shall be allowed to occupy or use the streets and highways of the Town or be allowed to operate without a CA.TV franchise.
- B. The franchise is granted for a term of twenty (20) years. The Town may hold with the Company, scheduled performance evaluation and review sessions the fifth (5), tenth (10) and fifteenth (15) anniversary dates of the award of the franchise to the Company. All such evaluation sessions shall be open to the public. Special evaluation sessions may be held at any time during the term of the franchise at the request of the Town or Company, at such time as may be mutually agreed upon between the Town and the Company.

C. After full public hearings, and according to the franchise renewal procedure that follows, the franchise may be renewed for period of ten (10) years as in the opinion of the Board of Trustees will serve the public interest.

D. Procedures to consider for franchise renewal:

- 1) Twelve (12) months before expiration of the franchise the Board of Trustees shall review the performance of the franchise and the content of the CATV ordinance.
- 2) After giving public notice, the Board shall proceed to determine whether the Company has satisfactorily performed its obligation under the franchise. To determine satisfactory performance, the Board shall look at the technical developments and performance of the system, programming, other services offered, cost of service- and any other particular requirements as set forth in the ordinance. Also, provision shall be made for community comment, and industry performance on a national basis shall be considered.
- 3) A four-month period shall be provided to determine the Company's eligibility for renewal.
- 4) The Board shall then prepare amendments to the franchise ordinance that it believes necessary.
- 5) The Board shall consider (a) renewal of the franchise, (b) changes to the franchise, and (c) amendments to the franchise ordinance.
- 6) If the Board of Trustees finds the Company's performance satisfactory, a new franchise may be granted pursuant to the ordinance as amended.
- 7) to the event the current Company is determined by the Board of Trustees to have performed unsatisfactorily, new applications may be sought and evaluated by the Board of Trustees and a franchise award made by the Board according to a CATV franchising procedure adopted by the Board of Trustees.

3-2-43**Cancellation and Termination**

The Board of Trustees may cancel the franchise conferred by this ordinance at any time prior to its expiration date upon a finding, made after thirty (30) days notice of the proposed cancellation and public hearing, that the company has failed to cure one or more of the following defect; during a sixty (60) day period following written notice by the Board of Trustees to the grantee of such defect:

- A. Material breach, whether by act or omission, of any term or condition of this franchise ordinance.
- B. Material misrepresentation of fact in the application for or negotiation of the franchise.
- C. Failure to provide subscribers or users with adequate service in the best interest of the public convenience and welfare.

3-2-44**Continuity of Service**

Continuity of service is Mandatory. The Company shall be required to provide continuous service to all subscribers in return for payment of the established fee. If the Company over builds, rebuilds, modifies, or sells the system, or the Town revokes or fails to renew this franchise, or he Town elects to purchase the system at a fair and equitable price, the Company is required as part of this franchise to continue to operate the system until an orderly change of operation is effectuated. In the event the Company fails to operate the system for thirty (30) consecutive days without prior approval of the Board of Trustees, the Town or its agent may operate the system until such time that a new operator is selected.

3-2-45**Transfers and Assignments**

The Company operating under this ordinance shall not be permitted to sell, lease, sublease, transfer, or otherwise change working control of the franchise herein granted without prior approval of the Town. For purposes of determining whether it shall consent to such change transfer, or acquisition of control, the Board of Trustees may inquire into the prospective controlling party, and the Company shall assist the Board of Trustees in any such inquiry. If the Board of Trustees does not schedule a hearing on the matter within sixty (60) days after notice of the change or proposed change and the filing of a petition requesting its consent, the Town shall be deemed to have consented. In the event, that the Board of Trustees adopts a resolution denying its consent, and such change, transfer, or acquisition of control has been effected, the Board of Trustees may terminate the franchise.

The consent or approval of the Board of Trustees to any assignment, lease, transfer, sublease, or mortgage of the franchise granted to the Company shall not constitute a waiver or release of the rights of the Town in and to the streets.

3-2-46 Annexation

Upon the annexation of any new territory by the Town, the portion of the CATV system that may be located or operated within such territory, and the streets, alleys or public grounds thereof, shall thereafter be subject to all the terms of this grant as though it were an extension there-under.

The Company shall offer CATV service to all residents of the Town, according to its present boundaries. The Company shall offer CATV service to all residents of the Town, as its boundaries may change by annexation, provided that the Company shall not be required to extend service to any area with an overall density of less than twenty-five (25) subscribers per mile of cable.

3-2-47 Technical Standards and Specifications

Methods of construction, installation, and maintenance of the cable television system shall comply with the National Electrical Safety Code, National Electric Code of 1977, to the extent that such Code is consistent with local law affecting the construction, installation, and maintenance of electrical supply and communication lines. To the extent that such Code is inconsistent with other provisions of this franchise or with local 'Laws, the latter shall govern. The above described Code shall continue to apply in the event that it is amended hereafter.

Where underground or buried facilities are necessary, the Company will place cables or conduits at a minimum depth of eighteen (18) inches at the original time of construction and of all repairs after the project is completed, the Company will comply with city ordinances that pertain to the construction and repair of its facility and will obtain permission from the town before cutting any street or paved area.

All transmission and distribution structures, poles, lines and equipment installed or erected by the Company within the franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets.

In case of disturbance of any street or paved area, the Company shall, at its expense and in a manner approved by the Town, replace and restore such street or paved area in as good condition as before.

The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Company when lawfully required by the Town by reason of traffic conditions, public safety, street excavation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Town; but, the Company shall in all cases have the right of abandonment: of its property, subject to Town ordinances, and if public funds are unavailable to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Company.

The Company shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings, provided: (1) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Company, making such payment in advance; and (2) the Company is given not less than three business days advance notice to arrange for such temporary wire changes.

All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike fashion. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations. All installations shall be underground in those areas of the Town where public utilities providing telephone and electric service are underground. In areas where either telephone or electric facilities are above ground at the time of installation, the Company may install its service above ground.

The Company shall have the authority to trim trees Over hangings any streets or other public places in the franchise area so as to prevent branches from coming in contact with the Company's wires and cables, except that at the option of the Town, such trimming may be done under its supervision and direction.

Subject to any applicable state or federal regulations or tariffs, the Town shall have the right to make additional use, for any public purpose, of any poles controlled or maintained exclusively by or for the Company in any street, provided: (1) such use by the Town does not interfere with the use by the Company; and (2) the Town holds the Company harmless against and from all claims, demands, causes of action, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles.

3-2-48

Tower Construction

Any tower constructed for use in the cable television system shall comply with the standards contained in Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, EIA Standards RS 222-A as published by the Engineering Department of the Electronic Industries Association 2001 1 Street, N. W., Washington, D. C. 20006. Any amendments to said standards shall have the same force and application as the original.

3-2-49

FAA Regulations

Installation and physical dimensions of any tower constructed for-use in the cable television system shall comply with all appropriate Federal Aviation Agency regulations including, but not limited to, Objectives Affecting Navigable Airspace, 14, C.F.R. 77. 1 et seq., February, 1965, as they may be amended hereafter.

3-2-50

Antenna Structure

Any antenna structure used in the CATV system shall comply with Construction Marking, and Lighting of Antenna Structure, 47 C.F.R. 17.1 et seq., September 1967, as they may be amended hereafter.

3-2-51

OSHA Regulations

All working facilities and conditions used during construction installation, and maintenance of the CATV system shall comply with the Standards of the Occupational Safety and Health Administration, as they may be amended hereafter.

3-2-52

FCC Regulations

The Company shall comply with the rules and standards for cable television operations as adopted by the FCC. 47 C.F.R. 76.601-76.613 (1972), an they may be amended hereafter.

3-2-53

Town Regulations

The Company shall comply fully with the rules and regulations contained and promulgated within this ordinance and all other Town ordinances which apply to the operations of the CATV system, including but not limited to: the ordinance requiring the attaining of a permit for digging in rights-of-way, from the town.

3-2-54

Head-End Equipment

The Company shall construct, own and operate its own head-end equipment consisting of a community antenna and tower and satellite receiving station(s) as required.

3-2-55**Subscriber Interruptions**

In the event of an interruption to the service, which is not due to the negligence of the customer, an allowance will be made if the interruption continues for more than thirty-six (36) hours from the time it is reported to or detected by the Company.

The allowance will be the prorated portion of the monthly rate or monthly guarantee for the service or the portion of the service made inoperative.

3-2-56**Construction Time-Tables**

Construction of the project shall commence as soon as practical after franchise is awarded but not more than one (1) year from the date of the franchise, provided a cross ownership waiver is obtained.. Service shall be made available to the economically feasible area of the town within two (2) years of the date of receiving the franchise and to all interested subscribers in the town within two and half (2 1/2) years of the date of receiving the franchise.

After initial construction of the system, upon the reasonable request for service by any person located within the Town, the Company shall, within sixty (60) days, furnish service to such person. A request for service shall be considered unreasonable for the purpose of this subsection, if direct access cannot be obtained to such person's premises and all other means of access are highly impractical and conditions of second paragraph of Section 6 regarding density are not met.

3-2-57**New Developments**

The Company shall provide service to all potential home sites in those new developments requesting Company service, outside of the Company's existing Franchised Service Area. installation cost of the Company's facilities to provide such service from the nearest facility with spare capacity shall be borne by the developer, whether such facilities are provided entirely by new construction or by additions to existing routes.

A written agreement between the Company and the developer will include allocated construction cost, and an annual refund provision for a period not to exceed five (5) years. When the revenue factor per subscriber equals or exceeds the per subscriber cost, an amount equal to the per subscriber cost is refunded. If the revenue factor per subscriber is less than the per subscriber cost, a refund is made in an amount equal to the revenue factor of the subscriber.

Refunds will not be made for subscribers in excess of the number of estimated net subscribers specified in the written agreement.

At the end of five (5) years, any remaining balance not refunded, due to lack of subscriber development, will revert to the Company.

3-2-58**Functions to be Regulated**

The Company shall have a publicly listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received during the normal work, day hours.

The Company shall maintain a repair service telephone on a twenty-four (24) hour basis. Further, the Company shall have a troubleshooting force capable of responding to subscriber complaints or requests for service within thirty-six (36) hours after receipt of the complaint or request.

3-2-59**Employment Requirements**

The Company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. The Company shall strictly adhere to the equal employment opportunity requirements of the FCC, as expressed in Section 76.13 (h) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations. The Company shall comply at all times with all other applicable federal, state, city and county laws, and all executive and administrative orders relating to nondiscrimination. The Company shall make a positive effort to hire racial minorities, women and other protected groups as subcontractors if available and qualified.

3-2-60**Rates**

Prior to beginning operation, the Company shall file with the Town a schedule of tariffs which shall include all taxes, fees, charges, and rates to be charged to subscribers. Thereafter, if any of said taxes, fees, charges, or rates are changed, the Company shall notify the Town of said changes in writing at least thirty (30) days before said changes take effect.

At the time of the adoption of this ordinance the Town chooses not to become involved in the rate making process, believing, that "supply and demand will be an effective rate control. However, the Town reserves the right to become involved in the rate making process and to approve or disapprove proposed rates. Approval by the Town shall not be unreasonably withheld.

Free installation and basic monthly service will be provided to the Town office building, library and to the public schools.

3-2-61

User Classes and Divisions

Subscribers may be divided into commercial and residential classes. Nothing in this provision shall prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purposes of attracting subscribers. Rates for commercial and non-commercial users of access channels may be established separately. Nothing shall prohibit preference in rate: for non-commercial users.

3-2-62

Advance Charges and Deposits

The Company may require subscribers to pay for each month of basic service in advance at the beginning of each month. Nothing in this provision shall be construed to prohibit charges or waiver of charges for initial installation or reconnections.

3-2-63

Installation and Reconnection

Except as otherwise provided elsewhere in this ordinance, the Company may make a charge to subscribers for the installation of service outlets and for the reconnection of service outlets.

3-2-64

Disconnection

There shall be no charge for the disconnection of any installation or outlet. If any subscriber fails to pay for a properly due monthly subscriber fee or charge, the Company may disconnect the subscribers service outlet, provided; however, that such disconnection shall not be effected until thirty (30) days after the due date of said delinquent fee or charge and shall include seven (7) days, written notice of the intent to disconnect delivered to the subscriber in question. If a subscriber pays thirty (30) days after payment is due and after notice of disconnection has been given, the Company shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge the payment of reconnection charge, the Company shall reinstate a subscriber cable service.

3-2-65

Public Liability Insurance & Indemnification

The Company shall at all times protect and hold the Town harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney s fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Company in the ownership, construction, repair,

replacement, maintenance, and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, providing the Town gives the Company prompt notice of any such claims, actions, and suits, without limitation, in writing. The Company shall maintain in full force and effect during the life of any franchise, public liability and property damage insurance for an amount of at least Five Hundred Thousand Dollars (\$500,000.00) single limit liability from the time of commencement of construction of the CATV system.

At the option of the Town, the Company shall either furnish said policies to the Town or furnish certificates of insurance to the Town.

All such insurance may contain reasonable" deductible provisions not to exceed. One Thousand Dollars (\$1,000.00) for any type of coverage. The Town may require that any and all investigation of claims made by any person against the Town arising out of any use or misuse of privileges granted to the Company hereunder shall be made by, or at the expense of the Company or its insurer. The Company may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carries', by appropriate amendment, endorsement or otherwise, provided., however, the interests of the Town shall be as fully protected thereby as if the Company had obtained individual policies of insurance.

The above-described insurance limits may be reviewed, by the Town, on a biennial basis, and increased as the Town may deem necessary.

3-2-66 Translator System

The Company shall insure that the position of its CATV system does not cause electronic interference with the reception of translator signals now in existence.

3-2-67 Authorizations Required

Upon the granting of the CATV franchise, the Company shall file for all federal, state and local licenses, permits and authorizations required for the conduct of its business as soon as practical but in no event more than sixty (60) days from the date of the franchise. If the cross-ownership waiver is not granted within six (6) months of the date of the award of this franchise, the Town may grant a reasonable extension or cancel this franchise.

3-2-68**Franchise Tax**

The franchise tax shall not be assessed against any taxes on services furnished by the Company herein, imposed directly upon any subscriber or user by the State, sown or other governmental unit and collected by the Company on the behalf of said government unit. The franchise tax will not be assessed on any monthly subscriber billing that may be dropped for promotional purposes.

The Company shall pay to the Town, during the life of the franchise, a sum equal to three percent (3%) of the gross monthly subscriber billing within the franchised area less uncollectibles and remit to the Town on a monthly basis no later than the twentieth (20th) of the following month in which it was billed.

The town shall have the right to inspect the Company's records showing the gross monthly subscriber bill from which its franchise taxes are computed.

3-2-69**Rights of Individuals**

The privacy of all subscribers shall be fully protected at all times. The Company shall not initiate or use any form, procedure or device for procuring information or data from cable subscribers Premises by use of the cable system without prior valid written authorization from the subscriber so affected. Nothing contained herein shall prohibit the Company from conducting system-wide or individual addressed "sweeps" for the purpose of verifying system integrity, controlling return path transmission, or billing for pay services.

3-2-70**Violations: Penalties**

From and after the effective date of this Ordinance, it shall be unlawful for any person to construct, install or maintain within any public street in the Town, or within any other public property of the Town, or within any privately owned area within the Town which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the Town, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.

It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised CATV system within this Town for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the Company.

It shall be unlawful for any person, without the consent of the owner, willfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

Any person violating or failing to comply with any of the provisions of this section shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed One Hundred Dollars (\$100.00), imprisonment for a term of not to exceed thirty (30) days, or both.

For failure to make franchise payments within fifteen (15) days of the date as set out in Section 28, the Company shall pay One Hundred Dollars (\$100.00) per day, or part thereof, that the violation continues.

For failure to comply with any other provisions of this Ordinance, revocation of the franchise granted herein shall be pursued.

In the event that the Company fails or refuses to tender the above described penalties to the Town within thirty(30)days of written notice being issued by the Town, the Company shall be responsible for all costs including attorney's fees incurred by the Town, in collecting the penalty amounts.

3-2-71

Validity: Severability

If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or void, such unconstitutionality or voidness shall not affect the validity of the remainder of the Ordinance, and portions in conflict are hereby repealed. Provided; however, that in the event- that the Federal Communications Commission declares any section invalid that such section or sections will be renegotiated by the Board of Trustees and the company.

3-2-72

Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

3-2-72

Applicability

This ordinance shall be in force and take effect from and after its passage, approval and publication as provided by laws,

ARTICLE 3

LIQUOR AND BEER DISPENSER TAXES

- 3-3-1 Definitions
- 3-3-2 Classification
- 3-3-3 Declaration of Policy and Purpose
- 3-3-4 Levy of Tax
- 3-3-5 Payment of Tax
- 3-3-6 License Not Affected by Delinquency
- 3-3-7 Recovery of Tax by Suit
- 3-3-8 Failure to Pay Tax an offense

3-3-1 Definitions

As herein used, certain words, unless the context indicates otherwise, shall have the following meanings:

- (a) Malt Liquors - Shall include beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar products or any combination thereof in water, containing more than 3.2% of alcohol by weight, or as may be defined by State law;
- (b) Spirituous Liquors - Shall be construed to mean any alcoholic beverage obtained by distillation mixed with water and other substances in solution and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing alcohol and which are fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except as above provided shall not be construed to be malt or vinous liquors, but shall be spirituous liquors;
- (c) Vinous Liquors - Shall include wine and fortified wines not exceeding 21% of alcohol by volume and shall be construed to mean alcoholic beverages obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar;

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- (d) 3.2% Beer -- Malt liquor as herein defined containing not more than 3.2% of alcohol by weight.
- (e) Medicinal Liquors - Any liquor sold by a duly licensed pharmacist or drug store solely on an bona fide doctor's prescription.
- (f) Operator - A person licensed by law to sell malt, vinous, or spirituous liquors, other than medicinal liquors, for beverage purposes at retail, and who is engaged at any time during the calendar year in such operation in the Town.

3-3-2 Classification

The Business of selling at retail, any 3.2% beer, malt, vinous, or spirituous liquor other than medicinal liquors for beverage purposes is hereby defined and separately classified as such occupation for the purpose of this part of the Code as follows:

Class "A" Operators: All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises either as hotels., restaurants shall be Class "A" Operators.

Class "B" Operators: All operators licensed to sell malt or vinous liquors only by the drink for consumption on the premises shall be Class "B" Operators.

Class "C" Operators: All operators licensed as retail stores to sell in original containers malt, vinous, or spirituous liquors for consumption off the premises shall be Class "C" Operators.

Class "D" Operators: All operators licensed as drug stores to sell malt, vinous or spirituous liquors in original containers for consumption off the premises shall be Class "D" Operators.

Class "E" Operators: All operators licensed to sell malt, vinous, or spirituous liquors as clubs are Class "E" Operators.

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Class "F" Operators: All operators licensed to sell only 3.2% beer shall be classified as follows:

Class "FI" Operators: All operators licensed to sell or selling 3.2% beer for consumption off the premises of the licensee shall be Class "FI" Operators.

Class "F2" Operators: All operators licensed to sell or selling 3.2% beer for consumption on the premises of the licensee shall be Class "F2" Operators.

Class "F3" Operators: All operators licensed to sell or selling 3.2% beer for consumption both on and off the premises of the licensee shall be Class "F3" Operators.

3-3-3 Declaration of Policy and Purpose

The Board of Trustees hereby finds, determines and declares that, considering the nature of the business of selling at retail 3.2% beer, malt, vinous or spirituous liquors for beverage purposes and the relations of such business to the municipal welfare, as well as the relation thereof to the expenditures required by the Town and a proper, just and equitable distribution of tax burdens within the Town, and all other matters proper to be considered in relation thereto, that the classification of said business as a separate occupation is reasonable, proper, uniform and nondiscriminatory and that the amount of tax imposed by this section is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of tax burdens within the Town,

3-3-4 Levy of Tax

There is hereby levied and assessed for the year 1978 and for each year thereafter an annual occupation tax upon the business of selling 3.2% beer, malt, vinous or spirituous

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liquors, except medicinal liquors, in the Town of Hotchkiss, as said occupation has been herein classified as follows:

For all Class "A" Operators the sum of \$500.00

For all Class "B" Operators the sum of \$500.00

For all Class "C" Operators the sum of \$150.00

For all Class "D" Operators the sum of \$300.00

For all Class "E" Operators the sum of \$350.00

For all Class "F1" Operators the sum of \$150.00

For all Class "F2" Operators the sum of \$150.00

For all Class "F3" Operators the sum of \$300.00

3-3-5 Payment of Tax

Such tax shall be, due and payable to the Treasurer of the Town annually on or before the expiration date of the liquor or beer license of the Operator.

The Operator shall, at all times during said year, keep the said receipt posted in a conspicuous place in the place of business.

The Tax is assessed from year to year and corresponds to the same period as that of the Operator's liquor or beer license. There shall be no proration or refund of this Tax where the business is used for only a portion of said year. Upon transfer of the license from one operator to another during the calendar year, a new tax shall not be imposed, but a transfer fee of \$25.00 shall be paid to the Town in addition to any other fees, taxes or licenses otherwise provided for.

The Operator shall at the time he pays his tax designate to the Town Clerk under what classification his place of business is operated.

3-3-6 License Not Affected By Delinquency

No delinquency in payment of the tax herein provided for shall be grounds for suspension or revocation of any license granted to any such operator by any licensing authority

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pursuant to the statutes enacted by the General Assembly of Colorado, and in the performance of any duties imposed upon the Town Board as a licensing authority by said statutes, the Town Board shall exclude from consideration any delinquency in payment of the tax herein provided.

3-3-7 Recovery of Tax by Suit

The Town shall have the right to recover all sums due by the terms of this section by judgment and execution thereon in a civil action, in any court of competent jurisdiction; such remedy shall be cumulative with all other remedies provided herein for the enforcement of this section.

3-3-8 Failure to Pay Tax an Offense

Failure to comply with the terms of this section by payment of taxes, securing and posting a receipt therefore, and to otherwise comply with the terms of this section, shall constitute an offense and violation of this Code; delinquency for each calendar month shall constitute a separate and distinct offense; but no conviction for such violation shall work as a revocation of the licenses of the defendant issued under the laws of the State of Colorado.