**TOWN OF TALTY**

**ORDINANCE 2014-007**

**[RENEWING ORDINANCE NO. 1999-2005**

**AN ORDINANCE OF THE TOWN OF TALTY, TEXAS, GRANTING TO TRINITY VALLEY ELECTRIC COOPERATIVE (“TVEC”), INC. ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT, PRIVILEGE, AND FRANCHISE FOR THE TERM OF FIFTEEN YEARS, SUBJECT TO EXTENSION, TO ERECT, MAINTAIN, AND OPERATE AN ELECTRIC POWER UTILITY SYSTEM IN THE TOWN OF TALTY, TEXAS; TO ERECT, MAINTAIN, AND OPERATE ITS FACILITIES IN, OVER, UNDER, ALONG, AND ACROSS THE PRESENT AND FUTURE PUBLIC RIGHT-OF-WAY IN THE TOWN; PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER; PRESCRIBING THE CONDITIONS GOVERNING THE OPERATION OF THE BUSINESS INSOFAR AS IT AFFECTS THE USE OF PUBLIC PROPERTY FOR THE PURPOSE OF SUCH BUSINESS; INSTALLATION, UPGRADE, MAINTAINANCE, AND OPERATION OF SAID SYSTEM AND BUSINESS; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS, TVEC** has received certification from the Public Utility Commission of Texas (“PUC”) to serve such area; and

**WHEREAS, TVEC** has requested that it be granted a franchise to operate within the Town of Talty, hereinafter sometimes referred to as “The Town”.

**WHEREAS**, The Town deems it appropriate and in the best interest of the Town and its citizens that a franchise be granted to TVEC.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF TALTY:

**Section 1.** **Short Title.** This Ordinance shall be known and may be cited as the Town of Talty and Trinity Valley Electric Cooperative, Inc. “Franchise Agreement.”

**Section 2.** **Definitions.** For the purpose of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense included the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall,” “will,” and “must” are always mandatory and not merely directory.

(A) **Affiliate:** An entity that owns or controls, is owned or controlled by, or is under common ownership with Grantee.

(B) **Anniversary Date**: The month and day of the Effective Date of this Franchise Agreement, during each year of the term of the Franchise Agreement.

(C) **City:** The Town of Talty, Texas.

(D) **Control**: The actual working control of a Grantee in whatever manner exercised.

(E) **Days:** Calendar days unless otherwise specified.

(F) **Facilities:** All the plant and equipment of the Grantee, including all tangible personal property, without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished or supplied for, by, or in connection with the business of the Grantee.

(G) **Franchise:** The initial or renewed authorization granted hereunder to construct, operate, upgrade, rebuild and maintain an electric power utility system within the Public Rights-of-Way of the Town. The term does not include any license or permit that is required by other applicable laws of the Town for the privilege of transacting and carrying on a business within the Town, not included within the conditions of this Franchise Agreement.

(H) **Franchise Year:** Any twelve-month (12) period commencing on an Anniversary Date and extending to the day immediately preceding the next subsequent Anniversary Date.

(I) **Franchise Area:** The incorporated area of the Town and such additional areas as are included in the corporate limits of the Town during the term of this Franchise Agreement.

(J) **Grantee:** Trinity Valley Electric Cooperative, Inc., an electric service provider or any person who succeeds it, in accordance with the provisions of this Franchise Agreement Ordinance.

(K) **Gross Revenues**: Any and all revenues derived by Grantee or any Affiliate of Grantee from the operations of the electric power utility system and the Services provided within the Town limits. “Gross Revenues shall not include revenues received from the sale of electric power and energy to other electric utilities or retail electric providers for resale.”

(L) **Person:** Any individual, firm, partnership, limited partnership, limited liability company, association, corporation, company, organization or entity of any kind.

(M) **Public Right-of-Way:** The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the Town holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation construction, operation, upgrade, rebuild and maintenance of an electric power utility system. No reference in this Franchise Agreement to a Public Right-of-Way shall be deemed to be a representation or guarantee by the Town that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of an electric power utility system and the Grantee shall be deemed to gain only those rights which the Town has the right and power to give.

(N) **PUC.**: Public Utility Commission of Texas as presently constituted by the laws of the State of Texas or its successor agency.

(O) **Services:** All acts done, rendered or performed and any and all things furnished or supplied and any and all facilities used, furnished or supplied by Grantee to the consumer and any other Person in the performance of the rights granted pursuant to this Franchise Agreement Ordinance. For purposes of this definition, the term “service” shall be construed in its broadest and most inclusive sense.

**Section 3.** **Grant of Non-exclusive Authority.** The Town hereby grants to the Grantee the non-exclusive Franchise Agreement, right, authority and privilege to construct, erect, operate and maintain an electric power utility system in, upon, along, across, above, over and under the Public Right-of-Way now laid out or dedicated, and all extensions thereof and additions thereto, in the Franchise Area. Grantee or its Affiliates shall not install or construct facilities within the Town’s public Right-of-Way to be used for services which are not authorized by this Franchise Agreement Ordinance.

**Section 4.** **Use of Existing Pole Line Facilities.** There is hereby granted the further right, privilege, and authority to the Grantee to lease, rent, or in any other manner obtain the use of poles, underground conduits and other facilities from the Town and any and all holders of public licenses and franchises within the limits of the Franchise Area, and to use such poles, underground conduits and other facilities, subject to all existing and future ordinances and regulations of the Town. The polies used for the Grantee’s distributions system shall be those currently used and maintained by the Grantee or erected and maintained by the Town or the public utilities service the Town, provided that mutually satisfactory rental agreements or other arrangements can be entered into by the Grantee with the Town or said companies; otherwise, the Grantee may erect additional poles in accordance with the applicable regulation of the Town. In areas or locations where underground conduit is in use, or shall at some future date be used by the public utility companies serving the Town, the Grantee, by negotiation with said companies, will join in the use of underground facilities provided mutually satisfactory agreements or other arrangements can be entered into with said companies; otherwise, the Grantee may install its own underground conduits and facilities in accordance with applicable regulation of the Town and applicable provisions of this Franchise Agreement. Nothing in this Franchise Agreement shall authorize either party to attach any part of its facilities to any conduits or poles owned by the other party until the requesting party has entered into a separate agreement or other arrangement with the owner of such conduits or poles supported by independent consideration for such rights of attachment or use.

**Section 5**. **Duration.** Upon the filing with the Town by Grantee of the written acceptance required herein, this Franchise Agreement shall continue in full force and effect for a period of ten (10) years, commencing on the date of its final passage and approval by the Board of Aldermen (the “Effective Date”).

**Section 6.** **Performance Evaluation Sessions.** In order to assure that Grantee is complying with the provisions of this Franchise Agreement, the Town may hold a public hearing or hearings for the purpose of reviewing the performance of Grantee. Such hearing(s) shall be no more frequent than every two (2) years. Unless specifically waived by the Board of Aldermen of the Town of Talty, attendance of Grantee’s duly authorized representative at such hearing(s) shall be mandatory.

(A) At least sixty (60) days prior to any public hearing on this Franchise Agreement, the Town Secretary shall notify the Grantee of the date and time of the hearing. At the hearing, the Grantee shall be entitled to all the rights of due process consistent with the Town’s proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

(B) The subject of the hearings shall include, but not limited to, the Grantee’s performance under the Franchise Agreement, the development of new services, the utilization of new technologies a review of any federal or state laws, or regulations relevant to the Franchise, and a comparison of rates and performance to standards set by federal, state, or local agencies having jurisdiction.

(C) Upon request, Grantee shall make available to the Town, or the Town’s designee, any records, documents or other information which may be relevant to the Town’s review.

**Section 7.** **Compliance Standards.**

(A) The work done in connection with the construction, reconstruction, maintenance, operation, or repair of Grantee’s Facilities shall be subject to and governed by all present and future laws, rules, and regulations of the Town, the State of Texas, and the United States of America, including the PUC, and any and all other federal and state agencies having jurisdiction.

(B) The construction, maintenance, use, and operation of Grantee’s electric power utility system and all Facilities of Grantee subject to the provisions of this Franchise shall be subject to all lawful police powers, rules, and regulations of the Town. The Town shall have the power at any time to order and require Grantee to remove or abate any of Grantee’s Facilities that do not comply with the National Electric Safety Code, as amended, and which the Town has determined are dangerous to life or property. In the event Grantee fails or refuses to remedy the condition after three (3) day notice, in accordance with the Code, the Town shall have the power to remove or abate the same at the expense of Grantee without compensation or liability for damages to Grantee.

**Section 8.** **Conditions of Street Occupancy.**

(A) All Facilities erected or maintained by the Grantee within the Franchise Area shall be so located as to cause minimum interference with the proper and intended use of Public Rights-of-Way, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said Public Rights-of-Way.

(B) All installations of Facilities shall be durable, and installed in accordance with good engineering practices, and of sufficient height to comply with all existing regulations, ordinances and state laws so as not to interfere with the right of the public or individual property owners, and shall not unreasonably interfere with the travel and use of Public Rights-of-Way by the public and during the construction, repair, or removal thereof, shall not unreasonably obstruct or impede traffic.

(C) In the maintenance, use, and operation of its electric power utility system in the Public Rights-of-Way and in the course of any new construction or addition to its Facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the Public Rights-of-Way made by the Grantee in the course of its operations shall be guarded and protected at all times by the placement of barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be designated by warning lights.

(D) In case of disturbance of any Public Rights-of-Way by way of laying, constructing, maintaining, operating, using extending, removing, replacing, or repairing its Facilities, the Grantee shall at its own cost and expense, replace and restore such Public Rights-of-Way in as good or better condition as before the work involving such disturbance was done. Such restoration shall be complete within a reasonable time after completion of the work. Any such restoration of work performed in the Public Rights-of-Way shall be maintained by Grantee to the satisfaction of the Town of a period of one (1) year from the date of completion of such restoration work. If there is an unreasonable3 delay by Grantee in restoring and maintaining Public Rights-of Way after such excavations or repairs have been made, the Town shall have the right without further notice to restore and repair the same and to require Grantee to pay the reasonable cost of such restoration and repair. Grantee shall provide the Town written notice, except in emergency circumstances, of any proposed disturbance to Public Rights-of-Way prior to the commencement thereof, and to the Town and to the owner or occupant of the underlying property prior to the disturbance. Such notice shall be given by Grantee as early as is reasonably practical.

(E) If at any time during the period of the Franchise Agreement, the Town shall lawfully elect to alter or change the grade of any Public Rights-of-Way, or alter or change any public property, structure or facility of the Town, the Grantee, upon reasonable notice by the Town shall remove, relay, and relocate its Facilities at its own expense. If, after such reasonable notice, the Grantee fails to remove, relay or relocate its Facilities, the town can remove, relay or relocate Grantee’s Facilities, and Grantee shall reimburse the Town for all costs incurred as a result of such removal relay or relocation.

(F) Any Facilities placed in any Public Rights-of-Way by the Grantee shall be placed in such manner as not to interfere with any gas or telephone fixtures, water hydrant or main, drainage facility, or sanitary sewer, and all such Facilities shall not interfere with the usual travel on such Public Rights-of-Way, or to, unreasonably endanger users of such Public Rights-of-Way. The Town shall have the right to direct the placement of the Facilities.

(G) The Grantee, shall, on the request of any Person holding a building moving permit lawfully issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) business days advance notice to arrange for such temporary wire changes.

(H) The Grantee shall have the authority to trim trees or other natural growth upon the overhanging Public Rights-of-Way of the Town so as to prevent the branches of such trees or other natural growth from coming in contact with the Facilities of the Grantee. Grantee shall repair, replace, or provide compensation for any trees or other natural growth damaged as a result of Grantee’s negligence in the performance of such tree trimming. The Grantee shall make reasonable effort to notify customers in advance, when possible, before performing work on or adjacent to a customer’s property.

(I) In the areas of the Franchise Area where all of the facilities of all public utilities are placed underground, the Grantee shall place its Facilities underground.

(J) Grantee shall provide for review by the Town complete plans and specifications for all construction involving new subdivisions, large commercial customers, and construction of a new circuit or circuit reconstruction with the Public Rights-of-Way at least thirty (30) days prior to construction. In all other cases, Grantee shall provide as-built plans for review by the Town. Any notice of rejection shall set forth the reason for any denial in sufficient detail that the Grantee shall be able to amend its construction plans to satisfactorily address the reasons stated by the Town in its notice and resubmit its plans for approval. Final approval shall not be unreasonably delayed or denied.

(K) From time to time, the Town, or its representative, may request identification of the specific location of certain of the Grantee’s Facilities. The Grantee agrees to respond to any such request within forth-eight (48) hours of the receipt of the request. In the event Grantee fails to provide the necessary information, and damage is caused to Grantee’s Facilities, as a direct result of withholding said information, the Grantee shall hold the Town harmless from all liability, damage, costs or expense resulting from any Town action in this regard.

(L) The Town reserves the right to permit to be laid and repaired, sewer, gas, water and other pipelines, cables, conduits, and other similar facilities in, along, over or under any Public Right-of-Way occupied by the Grantee. The Town further reserves the right to permit soil borings into and the installation of monitoring wells in or under any Public Right-of-Way occupied by the Town. In permitting such work to be done, the Town shall not be liable to the Grantee for any damages so caused, nor shall the Town be liable to the Grantee for any damages arising out of the performance of said work by the Town’s licenses, invitees, or franchisees; provided however, nothing herein shall relieve any other Person from liability for damage to the Grantee’s Facilities.

(M) In the event the Town closes or abandons any Public Right-of-Way which contains the Facilities of Grantee installation hereunder, any conveyance of land contained in such closed or abandoned Public Right-of-Way shall be subject to the rights of Grantee described in this Franchise Agreement.

**Section 9. Indemnification**

Grantee shall defend, indemnify and save whole and harmless the Town and all of its officers, agents, and employees, against any and all claims, lawsuits, judgments, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought or suffered by any Person or persons that may be occasioned by, or arise out of Grantee’s breach of any of the terms or provisions of this Ordinance, or by any negligent or strictly liable act, or omission by Grantee, its officers, agents, employees, subcontractors, affiliates and subsidiaries, in the construction, maintenance, operation, or repair of the generation, transmission, or distribution system, or by the conduct of Grantee’s business in the Town pursuant to this Ordinance; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the Town, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence or fault of both the Grantee and the Town responsibility and indemnity if any shall be apportioned comparatively in accordance with the laws of the State of Texas without, however waiving any governmental immunity available to the Town under Texas law, and without waiving any of the defenses of the parties under Texas law. It is understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this Franchise Agreement shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise, to any person or entity.

**Section 10. Liability Insurance.**

(A) Grantee will insure against the risks undertaken pursuant to their Franchise Agreement, including indemnification under Section 9 hereof. Such insurance may be in the form of self-insurance to the extent permitted by applicable law under a Grantee approved formal plan of self-insurance maintained in accordance with sound accounting practices. Otherwise, Grantee shall maintain reasonably adequate insurance covering its obligations of indemnity under Section 9 hereof. A certificate of insurance shall be provided to the Town annually and upon any substantial change in the nature of its coverage under this section. Should Grantee elect to self-insure, its annual notice to the Town shall contain information identifying the process for filing a claim.

(B) Within thirty (30) days after the Effective Date of this Franchise Agreement, Grantee shall file with the Town Secretary, and shall maintain on file throughout the term of this Franchise Agreement a certificate of insurance evidencing liability insurance policy issued by a company duly authorized to do business in the State of Texas.

(C) The Board of Aldermen of the Town of Talty shall reserve the right to require Grantee to increase the minimum amounts of liability insurance coverage to such amounts as is deemed by the Board of Aldermen to be reasonably necessary at such time. Such requirements shall be expressed by resolution or Ordinance.

(D) Such policy of liability insurance shall contain the provision that written notice of expiration, cancellation, or reduction in coverage of the policy shall be delivered to the Town Secretary and to Grantee at least thirty (30) days in advance of the Effective Date thereof.

(E) Grantee agrees that with respect to the insurance requirements contained in this Section, all insurance certificates will contain the name of the Town as an additional insured as to all applicable liability coverage (except worker’s compensation).

**Section 11. Operational Standards.**

(A) Grantee’s electric power utility system within the Town shall be installed, replaced, upgraded, maintained and operated in accordance with the standards of the National Electric Safety Code to the end that customers receive a safe, responsive and reliable form of service. The Grantee shall at all times furnish service sufficient to meet reasonable demands without undue interruption or fluctuations. The Grantee shall make service connections on reasonable demand without undue delay. The Grantee covenants that it will furnish services and Facilities that are safe and efficient and that meet the minimum standards in this Franchise Agreement. All repairs shall be made promptly.

(B) The Grantee shall provide the Town with a copy of the written report of any performance tests of the Facilities required by the PUC or other state and/or federal agencies having jurisdiction. Upon the written request of the Town, the Grantee shall provide the Town any and all other proof of performance tests conducted by Grantee, or any agent or contractor of Grantee.

(C) To the extent applicable to electric cooperative …” the Grantee shall comply with present and future rules and regulations of the PUC (and any other state and federal agencies having jurisdiction) including, but not limited to, technical standards, testing requirements, and consumer protection standards, if any, and all other present and future rules and regulations of the PUC (and any other state and federal agencies having jurisdiction) in connection with and relating to the operation of its electric power utility system.

(D) All complaints received by the Town, whether in writing or through verbal communication, relative to Grantee’s electric power utility system, or the method of its operations shall be forwarded by the Town to Grantee for handling. Where there is a pattern to complaints made, or where there exists other evidence which in the reasonable judgment of the Town casts doubt on the reliability or quality of Grantee’s service, the Town shall have the right and authority with respect to the specific complaint or complaints received to require Grantee, at is expense, to test, analyze and report on the performance of its Facilities. Grantee shall fully cooperate with the Town in performing such tests and, when requested by the Town to do so, shall prepare a written report reflecting the results and findings of such tests and analysis and deliver the same to the Town within thirty (30) days after such request is delivered by the Town to Grantee. Grantee shall maintain a complaint log, to be kept at the offices of the Grantee that includes a listing and resolution of all complaints received directly by Grantee, and complaints that have been forwarded to Grantee from the Town.

(E) Throughout the term of this Franchise Agreement, Grantee shall maintain in the quality of service and meet operational standards in the maintenance and operation of its Facilities as are required herein. Should the Town find that Grantee has failed to maintain such quality of service or operations standards, the Town may notify Grantee in writing, and specifically set forth therein the improvements required to rectify such deficiencies. Failure of Grantee to make such improvements within thirty (30) days of the receipt of such notification by Grantee shall be deemed a violation of a material provision of this Franchise Agreement and subject Grantee to revocation of this Franchise Agreement pursuant to Section 16 herein.

(F) Grantee shall comply with such customer service standards as may be adopted from time to time by the Town not inconsistent with federal or state law or this Franchise Agreement.

**Section 12. Franchise Fee.**

(A) During the term of this Franchise Agreement and the Grantee’s operation of its electric power utility system under the terms of this Franchise Agreement, the Grantee shall pay to the Town a fee equal to four percent (4%) of the Gross Revenues. The Franchise Fee shall be paid quarterly, in arrears, within forth-five (45) days following the last day of each calendar quarter and shall be computed on the basis of Gross Revenues received by the Grantee during the immediately preceding calendar quarter. The fee payable to the Town hereunder shall be exclusive of an in addition to generally applicable advalorem taxes, special assessments, fees for municipal improvements and other lawful obligations of Grantee to the Town.

(B) Grantee shall file with the Town within forth-five (45) days after the expiration of each quarter of each calendar year, or portion thereof, during which this Franchise Agreement is in effect a statement showing in detail the Gross Revenues of Grantee as they apply to the Franchise Area during the preceding quarter of the calendar year. Such statement shall be certified by an officer of the Grantee and shall accompany Grantee’s payment to the Town.

(C) Upon written request, the Town shall have the right, during normal business hours, to inspect Grantee’s records showing the Gross Revenues from which payments to the Town are computed and, to audit and re-compute any and all amounts paid under this Franchise Agreement. Any such inspection or audit shall take place within thirty-six months following the end of the calendar year in question. In the event the Town reasonably and lawfully identifies, as a result of an audit, amounts owed by the Grantee from the prior period in question, the Grantee shall pay a late penalty of ten percent (10%) (Annual percentage rate) of the amounts reasonably and lawfully identified as delinquent. In addition, any costs incurred by the Town in conducting such review of Franchise Fee payments shall be reimbursed by the Grantee. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable under this Franchise Agreement, or for the performance of any other obligation hereunder.

(D) Grantee shall pay a late penalty in an amount which is the greater of $100.00 or twelve percent (12%) Annual percentage rate of Franchise Fee payments, or portions thereof, that are delinquent and paid subsequent to the payment dates specified in Section 13(a): provided, however such late penalty only applies in the event the Town provides written notice to the Grantee within five (5) business days after the applicable due date that such payments have not been received in accordance with the dates specified in Section 13(a), and Grantee fails to remit such payments to the Town within five (5) business days of its receipt of such notice.

(E) Except as otherwise required by law, no portion of the Franchise Fee shall be noted separately on any bill to any customer for the use of services or commodities furnished by the Grantee.

**Section 13. Transfers and Change of Control.**

(A) All of the rights and privileges and all of the obligations, duties and liabilities created by the Franchise Agreement shall pass to and be biding upon the successors of the Town and the successors and assigns of Grantee; and, except as set forth in subsection (b) below, any or all of such rights and privileges shall not be assigned or transferred without the written approval of the Town, which approval shall not be unreasonably withheld or delayed. Such written approval shall be required in all instances where any of the current operations of the Grantee are assigned and/or transferred to affiliated or non-affiliated entities pursuant to changes in regulation by the PUC or State law concerning regulatory authority over electric power system operations.

(B) No assignment to any Person shall be effective until the assignee has filed with the Town an instrument in writing, duly executed, reciting the fact of such assignment, accepting the terms of this Franchise Agreement, and agreeing to comply with all of the provisions hereof.

**Section 14. Material Breach of Franchise and Liquidated Damages.**

(A) In addition to all rights and powers of the Town by virtue of this Franchise Agreement or otherwise, the Town reserves, as an additional and as a separate and distinct power, the right to take any of the actions described in Section 15(B) solely in accordance with the procedures specified herein if any of the following events occur or for any of the following reasons:

1. The Grantee, by act or omission, violates any material term, condition or provision of this Franchise Agreement;

2. The Grantee knowingly or willingly attempts to evade any material provision of this Ordinance;

3. The Grantee’s creditors obtain a final non-appealable order from a court of competent jurisdiction ordering the foreclosure or other similar judicial sale of all or any material part of the electric power utility system.

4. The Grantee suspends or discontinues its business, make an assignment in violation of Section 14 herein, becomes insolvent (howsoever such insolvency may be evidence), is adjudicated insolvent, petitions, or applies to any tribunal for, or consents to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official or a similar process is undertaken by any tribunal against all or a material part of the electric power utility system; or

5. The Grantee attempts to, or does, intentionally practice any fraud or deceit in its conduct or relations under this Franchise Agreement with the Town, customers, or potential customers.

(B) The Town may exercise the rights provided in Section 15, or Section 16 herein only in accordance with the procedures set forth below:

1. The Town shall notify the Grantee, in writing, of an alleged failure to comply with a material provision of this Ordinance, which notice shall specify the alleged failure with reasonable particularity. The Grantee shall, within thirty (30) days after receipt of such notice or such longer period of time as the Town may specify in such notice, either cure such alleged failure or, in a written response to the Town, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

2. The Town shall determine (i) whether a failure to comply with a material provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the Grantee. The Grantee shall make available to the Town, if requested, any records, documents or other information necessary to make the determination.

3. If the Town determines that a failure to comply with a material provision has occurred and that such failure is not excusable and has not been or will not be cured by the Grantee in a manner and in accordance with a schedule reasonably satisfactory to the Town, then the Town may take any actions provided in Section 15C or 15D herein.

(C) In the event that grounds exist which give the Town reasonable belief that the Grantee has failed to comply with a material provision of this Franchise Agreement, as provided in Section 15(A) herein, then, in accordance with the procedures provided in Section 15(B) herein, the Board of Aldermen of Talty may at any time during the term of this Franchise Agreement to the extent lawful: (i) seek liquidated damages in accordance with Section 15(D) from the Grantee in the amounts set forth in the following paragraph for the alleged failure to comply with a material provision of this Franchise Agreement; and/or (ii) in the event that the Grantee does not agree to pay such liquidated damages, then, as an alternative to taking the action referred to above, the Board of Aldermen may terminate this Franchise Agreement pursuant to **Section 16** of this Franchise Agreement herein.

(D) In addition to any other remedies provided herein, liquidated damages for violations of this Franchise Agreement are set forth below. Such sums of money shall be considered and treated not as a penalty, but as liquidated damages due to the Town by Grantee by reason of inconvenience to the public and because of public works supervision and maintenance and other Town administrative time and involvement which resulted in the expenditure of public funds due to Grantee’s failure to comply with certain provisions in this Franchise Agreement. As a result of any acts or omissions by the Grantee pursuant to the Franchise Agreement, the Town may charge to and collect from the Grantee, the following liquidated damages:

1. For failure to provide data, documents, reports, or information which is required hereunder or required to establish compliance herewith, or to participate with the Town during a system performance review and evaluation, the damage shall be One Hundred Dollars ($100.00) per day;

2. For failure of the Grantee to substantially comply with the construction, technical or customer service standards required by this Ordinance, the damage shall be One Hundred Dollars ($100.00) per day;

3. For failure to comply with all conditions of the Town permits to disturb Public Rights-of-Way, fix Public Rights-of-Way, or other lawfully enacted terms or conditions of the Town, the damage shall be One Hundred Dollars ($100.00) per day;

4. For failure to comply with any of the provisions of this Franchise Agreement for which liquidated damages are not otherwise specifically provided, the damage shall be One Hundred Dollars ($100.00) per day.

(E) Whenever the Town believes that the Grantee has violated one (1) or more terms, conditions or provisions of this Franchise Agreement, and liquidated damages will be sought, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the Town may impose liquidated damages unless the violation is of such a nature so as to require more than thirty (30) days to correct the violation.

(F) The rights reserved to the Town under this section are in addition to all other rights of the Town whether reserved by this Franchise Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to liquidated damages shall affect any other right the Town may have.

**Section 15. Termination.**  If the Grantee should violate any of the material terms, conditions or provisions of this Ordinance and should the Grantee fail to comply with the same, or commence reasonably appropriate actions to effect such compliance, for the period of thirty (30) days after the Grantee shall have been notified in writing by the Town to cease and desist from any such violation or failure to comply and the specific nature of such violation or failure to comply, then the Town shall have the right to commence proceedings to terminate the Franchise Agreement granted by this Ordinance; provided that such termination shall be declared only by written decision of the Town after appropriate proceedings affording the Grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply in accordance with Section 15. In the event that termination of the Franchise Agreement is imposed upon the Grantee by the Town, it shall be afforded, a nine (9) month period within which to sell, transfer, or convey its electric power utility system to a qualified purchaser at fair market value. During this period, the Grantee shall have the right to operate the electric power utility system pursuant to the provisions of this Ordinance.

**Section 16. Additional Regulations.**  The Town reserves the right to adopt, in addition to the provisions included in this Ordinance, such additional reasonable regulations as it shall find necessary in the exercise of its police power; provided, however, that if such regulations are in conflict with the privileges granted by this Ordinance, the Grantee shall notify the Town in writing of the point of conflict believed to exist. If the Town determines that a material provision of this Franchise Agreement does in fact conflict with additional regulations, the parties shall enter into good faith negotiations to modify any provision hereof to such reasonable extent as may be necessary to carry out the full intent and purpose of this Franchise Agreement.

**Section 17. Reporting, Inspection and Administration.**

(A) The Town shall have the right to inspect all pertinent books, records maps, plans, financial information, and other like materials of the Grantee relating to this Ordinance. Such materials will be made available by the Grantee in its office, located within twenty-five (25) miles of the Town, within normal business hours, upon receipt of reasonable notice from the Town.

(B) Within sixty (60) days after the close of each calendar year during which the Franchise is in effect, a report shall be filed by Grantee with the Town addressing the following areas. The areas to be addressed in any such report may be reasonably amended by the Town after sixty (60) days notice by the Town to the Grantee of any such amendment(s), during the term of this Franchise Agreement. Any such requested report shall address the following areas:

1. The number of customers by month by tariff of the services offered by the Grantee for the most recent fiscal year;

2. The results of any technical testing performed on the system during the most recent fiscal year;

3. A summary of complaints received during the most recent fiscal year identifying the number and nature of complaints and their disposition;

4. The gross revenue by month received by Grantee by type of service offered during the most recent fiscal year;

5. A summary of the request for service, identifying the number and type of service.

6. A discussion of any changes in state and federal law or regulations that have impacted the operation of the electric power utility system within the Franchise Agreement area.

**Section 18. Severability.**  If any section, sentence, clause or phase of this Ordinance is for any reason determined to be illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of this Franchise Agreement. It is the intent of the Town in adopting this Franchise Agreement that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this Franchise Agreement Ordinance are HEREBY DECLARED TO BE SEVERABLE.

**Section 19. Acceptance of Franchise Agreement.**

(A) Within thirty (30) days from the effective Date of this Ordinance, Grantee shall deliver to the Town a written statement in the following form signed in its name and on behalf.

“To the Honorable Mayor and Board of Aldermen of the Town of Talty, Texas:

For itself, its successors, and assigns, Trinity Valley Electric Cooperative, Inc., an electric service provider, duly authorized to do business in the State of Texas, hereby accepts the attached ordinance and agrees to be bound by all of its terms, conditions, and provisions.”

TRINITY VALLEY ELECTRIC COOPERATIVE, INC.

By:

Its:

(B) Acceptance of his Franchise Agreement, this Ordinance is passed and adopted in accordance with the notice and procedure requirements of the laws of the State of Texas governing the activities of cities, and in accordance with the notice and procedure requirements by the Town of Talty.

Signed and approved by the Mayor of the Town of Talty, Texas, on this 15th day of July, 2014.

Mayor Larry Farthing

Town of Talty, Texas

Attest:

Town Secretary, Sherry Bagby