

Ordinance No. 03- 37

**AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH THE
CHATHAM LIBRARY DISTRICT**

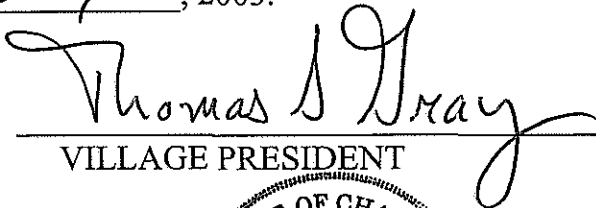
*BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE
VILLAGE OF CHATHAM, SANGAMON COUNTY, ILLINOIS, AS FOLLOWS:*

SECTION 1: That certain Settlement Agreement with the Chatham Library District, a copy of which is attached hereto, is hereby approved.

SECTION 2: The Village President is hereby authorized to execute the Settlement Agreement, and thereafter, the proper officers and employees of the Village are authorized and directed to carry out the lease according to its terms.

SECTION 3: This Ordinance is effective immediately.

PASSED this 8 day of JULY, 2003.


VILLAGE PRESIDENT

ATTEST:


Village Clerk



AYES: 4 HERR McADAMS Mc CARTHY KAVANAGH
NAYS: 2 BOYLE McGRATH

PASSED: 7-8-03
APPROVED: 7-8-03

ABSENT: 0

ORDINANCE CERTIFICATE

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

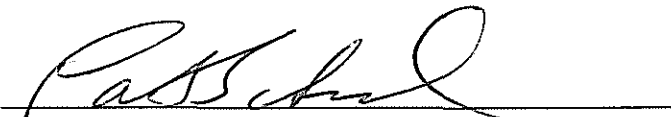
I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Chatham, Sangamon County, Illinois.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 03-37, adopted by the President and Board of Trustees of said Village on the 8 day of July, 2003, said Ordinance being entitled:

**AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH THE
CHATHAM LIBRARY DISTRICT**

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Village, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Village this 8 day of July, 2003.



Village Clerk



SETTLEMENT AGREEMENT

This agreement is between the Village of Chatham, Illinois ("Village") and the Chatham Library District ("District").

WHEREAS, the Village and the District are bodies politic and corporate of the State of Illinois, and there is substantial overlap between the territory and citizens of the District and the Village;

WHEREAS, the Village owns and operates a retail electric system, and charges its customers a published rate for consumption of electricity;

WHEREAS, the District is a customer of the Village electric system;

WHEREAS, the Village has claimed that in the six-year period preceding September, 2002, due to computer programming errors, the Village undercharged the District for the District's electric use, and according to the Village's published rates and the Village's calculations, the amount of the undercharge was approximately \$134,000;

WHEREAS, the District disputes the amount of the alleged undercharges; it maintains that under regulations of the Illinois Commerce Commission, it cannot be liable for more than two years of back charges; and it maintains that in any event, some or all of the Village's charges are barred as inconsistent with an account stated and are barred under applicable statutes of limitation;

WHEREAS, the parties have made demands and claims on each other with respect to this dispute; the Village has threatened an action to collect the entire amount of alleged back charges, and the District has threatened an action for declaratory judgment that no back charges whatsoever are owed;

WHEREAS, the corporate authorities of the parties wish to settle this dispute without resort to litigation and the resultant cost to their taxpayers and citizens;

WHEREAS, the District recognizes that it would be inequitable for the Village to shoulder a financial risk of litigation brought by a third party to challenge a settlement of this dispute; and the parties agree that their interests would be allied in the event of such litigation;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The preambles hereto are adopted and incorporated by reference as a statement of the intent of the parties in approving this agreement and a guide to construction of this agreement.

2. The District shall pay the Village a sum equal to the difference between amounts heretofore paid by the District for electric usage for a period of September, 2000 through September, 2002, and the amount which would have been paid, had the Village billed the District at the Village's published rate. The parties agree that the differential is \$41,388.63. The differential shall be paid in three installments each of \$13,796.21 due on or before August 1, 2003, August 1, 2004 and August 1, 2005.

3. The Village does not forgive the District for any alleged underpayments for electricity. However, the Village irrevocably covenants not to sue the District with respect to any alleged underpayments for electricity in excess of the amounts which the District has agreed to pay pursuant to this agreement. The District does not admit that it owes the Village with respect to any alleged underpayments or that the Village's calculations of any alleged underpayments are accurate. However, the District

irrevocably covenants not to sue the Village, for a declaratory judgment or otherwise with respect to any alleged underpayments. The irrevocable covenants not to sue contained in this paragraph extend to the officers, employees and other agents of the parties.

4. In the event this agreement is challenged directly or indirectly in any action brought against the parties by any third party, (including but not limited to taxpayers, citizens and customers), then the District and the Village shall defend the validity of this agreement. Each party will notify the other of any litigation in which the validity of this agreement is challenged, and will intervene in any such litigation if requested to do so by the other party. The parties may make best efforts to waive any conflicts and to agree on single counsel to defend both parties and their agents. The District shall indemnify the Village and its agents for one-half of their reasonable attorneys fees and other expenses incurred in defending the validity of the agreement. The District shall indemnify the Village against any monetary judgment, or monetary loss caused by equitable relief, in the event this agreement is successfully challenged by a third party.

5. This is the entire agreement of the parties with respect to its subject matter, and all prior communications and representations of the parties with respect to its subject matter are disclaimed. In the event of a breach by the District of its payment obligations, the Village's sole remedy shall be to enforce the payment obligations in an action at law. In the event of a breach by either party of any other provision of this agreement, the other party shall be entitled to injunctive relief or specific performance. This agreement shall be enforced only in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois.

6. This agreement shall take effect only when approved by the corporate authorities of each party by appropriate ordinance or resolution, and when executed by the President of the parties' respective boards.

AGREED:

VILLAGE OF CHATHAM, ILLINOIS

By: Thomas D Gray
Its President



Attest:

Pat Schaefer
Its Clerk

CHATHAM LIBRARY DISTRICT

By: _____
Its President

Attest:

Its Clerk