

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

ROBERTSON FIRE PROTECTION DISTRICT)	
)	
Plaintiff,)	
)	
vs.)	Cause No. 18SL-CC00749
)	
CITY OF HAZELWOOD,)	Division 12
)	
Defendant.)	

PETITION

COMES NOW Plaintiff Robertson Fire Protection District, and for its Petition against Defendant the City of Hazelwood, State of Missouri, alleges as follows:

The Parties

1. Robertson Fire Protection District (“RFPD”) is a political subdivision organized and empowered pursuant to Missouri Revised Statutes § 321.010 et seq. to supply fire, emergency and ambulance services to residents located within its boundaries, with the capacity to sue and be sued.

2. The City of Hazelwood, State of Missouri (the “City”) is a home rule charter city and a political subdivision of the State of Missouri with the capacity to sue and be sued.

The Fire Service Agreement

3. Pursuant to an election held on June 7, 1994, voters approved the annexation of a portion of the District commonly called the Northwest Area by Hazelwood.

4. On February 2, 1995, this Court entered an Amended Order, Decree and Judgment in Scott v. City of Hazelwood, cause # 664631, a copy of which is attached hereto as Exhibit 1 (“Annexation Judgment”). In pertinent part, the Annexation Judgment declared that the annexation of a portion of the District approved in the June 7, 1994, election was valid and

lawful. *Id.*, pp. 6-7. The Annexation Judgment further determined that RFPD's position as to "the question of fire service after annexation and the provision of fire and emergency medical services in the annexation area in the event annexation is approved, and payment for such services by the City [was] resolved favorably to" RFPD. *Id.*, p. 7.

5. The Annexation Judgment further expressly referred, on page seven thereof, to the Order, Judgment And Decree On Annexation this Court entered on February 2, 1995 in City of Hazelwood v. Scott, cause # 667811 ("Fire Service Judgment"), a copy of which Fire Service Judgment is attached hereto as Exhibit 2. The Fire Service Judgment determined that the exclusion of the area Hazelwood sought to annex from RFPD would substantially affect RFPD's ability to provide adequate services in the remaining portion of RFPD, and that the annexation in question, as a result, was "expressly conditioned on the use of the Robertson Fire Protection District to provide fire, emergency and ambulance services ["Fire Protection Services"] in the annexation area] ... and the City of Hazelwood's payment of fees for such services" to RFPD. *Id.*, p. 15. This Court therefore ordered RFPD to continue to provide fire, emergency and ambulance services to the Northwest Area, and ordered the City to pay RFPD fees for the services provided in the amount and manner specified in Missouri Revised Statutes sections 321.660 and 321.675.

6. On April 6, 1995, RFPD and the City entered into a Fire Service Agreement ("FSA"), in substantial part to "implement" the Annexation Judgment and the Fire Services Judgment. The FSA requires the RFPD "to provide protection service, emergency service and ambulance service" to the Annexation Area. In exchange, Hazelwood agreed to pay RFPD an annual fee for such services, with the annual fee derived from tax revenues collected from

property owners in the Annexation Area (the “Annual Payments”). A true and correct copy of the FSA is attached hereto as Exhibit 3.

7. Since the City annexed the Annexation Area, the RFPD has continually provided Fire Protection Services to the City, and it continues to so provide such services.

The City’s Intent to Terminate the Fire Service Agreement

8. Up until January of 2018, the City has abided by its obligations under the FSA to make its Annual Payment pursuant to the FSA. However, on or about December 20, 2017, the City repudiated its obligations under the FSA through the City’s adoption of Resolution No. 1713 (“Resolution”), a copy of which is attached hereto as Exhibit 4. Consequently, the City failed to make its Annual Payments to the RFPD that was due to be made in January, 2018.

9. The Resolution purports to terminate the FSA.

10. The RFPD has suffered, and will continue to suffer, gravely crippling consequences by virtue of the City’s purported unilateral termination of the FSA. The refusal and failure of the City to make its Annual Payments to the RFPD has deprived, and will continue to deprive, the RFPD of a revenue stream that is roughly fifty percent (50%) of the total annual revenue that it takes in. Further, because the City’s unilateral termination of the FSA was, and remains, legally ineffectual, the RFPD remains obligated to provide the Fire Services it is required to perform under that contract. Consequently, the City’s rash and unlawful purported unilateral termination of the FSA has caused, and will continue to cause, the RFPD grave and decimating financial consequences that already has caused gross impairment not only to the RFPD’s ability to provide the Fire Protection Services required by the FSA, but similar services within the territorial limits of the RFPD but outside the Annexation Area. Ultimately, therefore, the City’s unlawful actions complained of in this pleading have endangered, and will continue to

endanger in an escalating manner, the public safety and well-being of all those persons who reside in, work in, own property in, traverse through, or visit the RFPD. Such actions by the City are unconscionably unlawful.

The City’s Evasion of the Annual Payments Through Prior Public Finance Transactions

11. Missouri Revised Statutes section 321.230 grants RFPD the right to levy and collect ad valorem taxes, and also to sue and collect any and all other taxes, contributions or allocations to which RFPD is entitled.

12. Since entering into the FSA with the RFPD, the City has (on its own or through a legal conduit, including but not limited to The Industrial Development Authority of the City of Hazelwood, Missouri) entered into various public finance transactions (“Prior Public Finance Transactions”) without the consent of the RFPD, including but not limited to the following:

- a. On December 30, 2003, The Industrial Development Authority of the City of Hazelwood, Missouri, issued \$26,385,000 Series 2003 Tax Increment Refunding Revenue Bonds (“370/Missouri Bottom Road Redevelopment Project”);
- b. On March 15, 2007, the Industrial Development Authority of the City of Hazelwood, Missouri issued \$5,845,000 Series 2007 Taxable Annual Appropriation Capital Projects Bonds (“Cabela’s Project”);
- c. The City entered into a Purchase and Sale Agreement with NP Hazelwood 140, LLC (“NP 140”), assignee of Hazelwood Commerce Center, LLC, whereby the City agreed to convey certain real property located in the Annexation Area to NP 140 (the “NP 140 Property” or “Hazelwood Logistics Center”), but the City retained ownership of the property for taxing purposes, such that no taxes would be due and owing during the term of the Purchase and Sale Agreement (the “NP

140 Purchase and Sale Agreement”) in conjunction with the issuance by the City of \$4,045,000 Series 2008 Lease Certificates of Participation under Chapter 353 of the Revised Statutes of Missouri (the “NP 140 Chapter 353 Tax Abatement”); as well as other tax abatement programs including TIF and “Brownfields” tax credits;

13. Each of the Prior Public Finance Transactions were designed to finance the costs of a proposed development on RFPD’s annexed land.

14. In each of the Prior Public Finance Transactions, the City entered into various agreements with the developer entity, whereby the developer agreed to pay the City assessments, lease payments, or other payments over the term of the contract equal to the amounts that would have been owed by the City to the RFPD pursuant to the FSA for services rendered in connection with the new development which was the subject of each of the Prior Public Finance Transactions.

15. As a result of each of the Prior Public Finance Transactions, the City has paid no annual fee to the RFPD for fire protection, emergency and ambulance services rendered by the RFPD to each of the Prior Public Finance Transactions during the term of each of the contracts underlying the Prior Public Finance Transactions, in direction violation of the FSA and Mo. Rev. Stat. section 321.230.

16. Each of the Prior Public Finance Transactions project were designed by the City to redirect significant tax revenues to the City and away from the RFPD, and to evade the requirements of the FSA and Mo. Rev. Stat. section 321.230; and improperly excluded the RFPD from the payment of PILOT payments (as defined herein) resulting in the RFPD receiving less

tax revenues from the Annexation Area than would be received but for the granting of the tax abatement.

17. In the case of the NP 140 Chapter 353 Tax Abatement, the City provided notice to the RFPD of its intent to enter in the NP 140 Purchase and Sale Agreement and the NP 140 Indenture, and sought the RFPD's approval of its plans to develop the NP 140 Property. The notice given to the RFPD by the City was insufficient under Chapter 353 of the Revised Statutes of Missouri. A true and correct copy of this notice is attached hereto as Exhibit 4. The RFPD has refused to consent to the City's proposal for redevelopment of the NP 140 Property or any other Tax Abatement Project. Furthermore, the RFPD has not received payments in lieu of taxes ("PILOT") it is rightfully due for the NP 140 Chapter 353 Tax Abatement.

18. The RFPD's Certified Public Accountant estimates that the Prior Public Finance Transactions resulted in a financial loss exceeding \$12,000,000 to the RFPD.

19. The RFPD has received notice that the City intends (on its own or through a legal conduit, including but not limited to the Industrial Development Authority of the City of Hazelwood, Missouri) to issue additional public finance instruments including but not limited to taxable industrial revenue bonds to finance the costs of various new tax abatement projects ("Future Public Finance Transactions"), including but not limited to the following:

- a. A proposed industrial development project on real property located within the City limits (the "NP 370 Property") known as NP Hazelwood 370 Industrial LLC ("NP 370"). The NP 370 Property is located within the Annexation Area. Pursuant to the proposed NP 370 project, Industrial Development Bonds or revenue bonds will be issued pursuant to Mo. Rev. Stat. Chapter 100 to fund the acquisition and development of the NP 370 Property. During the term of the

development, title to the NP 370 Property will be held by the City, and accordingly, property taxes will not accrue, and the developer will be required to make PILOT payments to the taxing jurisdictions for a portion of the taxes it would have otherwise been required to pay.

20. As a result of the Future Public Finance Transactions, significant tax revenues will be redirected to the City, and away from the RFPD, in direct violation of the terms of the FSA and Mo. Rev. Stat. section 321.230.

21. On December 14, 2017, the City provided notice to the RFPD of its intent to issue the NP 370 bonds. The notice was insufficient under the requirements of Chapter 100 of the Revised Statutes of Missouri. A true and correct copy of this letter is attached hereto as Exhibit 5.

22. RFPD has reason to believe that the City intends to exclude RFPD from the PILOT payments under the NP 370 Bond deal.

23. If the City is permitted to enter into the Future Public Finance Transactions without reimbursing the RFPD and properly including them on the payment of PILOT payments, the RFPD will suffer financial loss.

24. Because the RFPD is located in St. Louis County, a county with a boundary commission, it is subject to Missouri Revised Statute section 72.418, which provides that the RFPD “may approve or reject any proposal of fire protection and emergency medical services by a city.”

25. This Court has jurisdiction over this matter pursuant to Article V, Section 14(a) of the Missouri Constitution, and pursuant to Missouri Revised Statutes § 478.070.

26. Venue is proper in St. Louis County pursuant to Missouri Revised Statutes § 508.030 because the City is situated in St. Louis County.

COUNT I – BREACH OF CONTRACT
FAILURE TO MAKE ANNUAL PAYMENTS UNDER THE FSA

27. The RFPD restates and incorporates paragraphs 1 through 25 as if set forth in full herein.

28. The City’s purported unilateral termination of the FSA and its failure and refusal to make the Annual Payments constitute material breaches of the FSA.

29. The FSA is a valid and subsisting intergovernmental agreement that is authorized as such by Mo. Rev. Stat. § 70.220, and Mo. Const. Art. 6, § 16.

30. The RFPD has suffered monetary damages that were proximately caused by the City’s breaches; the approximate amount of that money damage thus far is approximately Two Million, Three Hundred Thousand Dollars (\$2,300,000.00); such damages continue to accrue.

31. The RFPD has performed all of its obligations and conditions precedent under the FSA.

WHEREFORE, Plaintiff Robertson Fire Protection District requests that this Court enter a judgment for money damages in favor of the RFPD and against the City of Hazelwood in an amount that will be proven at trial, and that it award the RFPD such other relief as is just including an award of the RFPD’s attorney’s fees and litigation costs incurred herein.

COUNT II – BREACH OF CONTRACT
FAILURE TO PAY TAX REVENUES AND PILOTS
FROM PRIOR PUBLIC FINANCE TRANSACTIONS

32. The RFPD restates and incorporates paragraphs 1 through 31 as if set forth in full herein.

33. The RFPD has at all times performed all of its duties and obligations under the FSA by at all times providing Fire Protection Services as required under the FSA to the Annexation Area.

34. The City has breached the FSA by failing to pay the PILOT payments under the Prior Public Finance Transactions, as it is required to do under the FSA and Missouri Revised Statute section 321.230.

35. As a direct and proximate result of the City's failure to pay the PILOT payments under the Prior Public Finance Transactions , the RFPD has been damaged in an amount which has been estimated by RFPD's CPA to be in excess of Twelve Million Dollars (\$12,000,000.00).

WHEREFORE, Plaintiff Robertson Fire Protection District prays this Court enter a judgment for money damages in favor of the RFPD and against the City of Hazelwood in an amount that will be proven at trial, and that it award the RFPD such other relief as is just including an award of the RFPD's attorneys fees and litigation costs incurred herein; for pre-judgment interest at the maximum rate allowed by law; for post-judgment interest at the maximum rate allowed by law; for an award of RFPD's costs of suit; and for such other relief as this Court deems proper under the circumstances.

COUNT III – UNJUST ENRICHMENT
FAILURE TO MAKE ANNUAL PAYMENTS UNDER THE FSA

36. The District restates and incorporates paragraphs 1 through 34 as if set forth in full herein.

37. The City has received a benefit from the RFPD through the RFPD's continued provision of Fire Protection Services to the City Annexation Area in 2018.

38. It would be unjust to allow the City to retain the benefits conferred by the RFPD's continued provision of Fire Protection Services without having made its Annual Payments to the RFPD for 2018.

WHEREFORE, Plaintiff the Robertson Fire Protection District requests that this Court enter a judgment in its favor and against Defendant the City Hazelwood in the amount of the value of Fire Protection Services rendered to the Annexation Area in 2018; for pre-judgment interest at the maximum rate allowed by law; for post-judgment interest at the maximum rate allowed by law; for an award of the RFPD's costs of suit; and for such other relief as this Court deems proper under the circumstances.; and for such other relief as this Court deems proper under the circumstances.

COUNT IV – UNJUST ENRICHMENT
FAILURE TO PAY TAX REVENUES
FROM PRIOR PUBLIC FINANCE TRANSACTIONS

39. The District restates and incorporates paragraphs 1 through 38 as if set forth in full herein.

40. The City has received a benefit from the RFPD through the District's continued provision of Fire Protection Services to the City Annexation Area.

41. By entering into or agreeing to the Prior Public Finance Transactions without the consent of the RFPD, the City has in effect reduced the tax assessments generated by property located in the Annexation Area without the RFPD's consent. A portion of these assessments would have been otherwise payable to the RFPD pursuant to the terms of the Fire Service Agreement and Mo. Rev. Stat. section 321.230.

42. It would be unjust to allow the City to retain the benefits conferred by the RFPD's continued provision of Fire Protection Services without having to reimburse the RFPD for the value of the services rendered to the Prior Public Finance Transactions.

43. The value of the benefit rendered to the City by the RFPD associated with the Prior Public Finance Transactions is equivalent to [the amount of PILOT payments that should have been owed by the City to the RFPD under the Prior Public Finance Transactions.

WHEREFORE, Plaintiff the Robertson Fire Protection District requests that this Court enter a judgment in its favor and against Defendant the City Hazelwood in the amount of the value of Fire Protection Services rendered to the Annexation Area associated with the Prior Public Finance Transactions; for pre-judgment interest at the maximum rate allowed by law; for post-judgment interest at the maximum rate allowed by law; for an award of the RFPD's costs of suit; and for such other relief as this Court deems proper under the circumstances.; and for such other relief as this Court deems proper under the circumstances.

COUNT V – INJUNCTION

44. The RFPD restates and incorporates paragraphs 1 through 42 as if set forth in full herein.

45. The City has violated the terms of the FSA by failing to reimburse the RFPD for the assessment payments it has received from the Prior Public Finance Transactions, damaging the RFPD in the amount of the unpaid assessments.

46. The City has indicated its intent to continue to violate the terms of the FSA and Missouri Revised Statute section 321.230 by redirecting tax revenues to the City, and away from the RFPD, through the Future Public Finance Transactions, thereby further damaging the RFPD in the amount of any redirected tax revenues and unpaid PILOT payments.

47. The City has further indicated its intent to continue to violate the FSA and Missouri Revised Statutes section 321.230 by unilaterally terminating the FSA, which will damage the RFPD in an indeterminable amount.

48. As a result of these past and anticipated future breaches of the FSA and Missouri Revised Statutes section 321.230, the RFPD will suffer damages in an amount which is indeterminable, and would subject the RFPD to the risk of having to bring successive actions to recover for damages.

49. In addition, the termination of the FSA could potentially cause the failure of the RFPD, which would cause immediate and irreparable harm to the residents both inside and outside of the Annexation Area, who would thereby be deprived of fire, emergency and ambulance services.

50. There is no adequate remedy at law that would compensate the RFPD for these harms, as the RFPD would otherwise be forced to bring successive actions to recover for damages from the City.

51. A permanent injunction is necessary to prevent further damage to the RFPD.

52. The injunctive relief requested would cause no harm to Hazelwood other than to force it to comply with the terms of a legally binding agreement and Missouri Revised Statutes section 321.230.

WHEREFORE, Plaintiff the Robertson Fire Protection District prays this Court for the entry of a Judgment and Order in their favor and against Defendant the City of Hazelwood, permanently enjoining and barring the City from proceeding with further redevelopment projects in the Annexation Area without compensating the RFPD for any redirected tax revenues and unpaid PILOT payments generated therein, as required pursuant to the terms of the FSA and

Missouri Revised Statutes section 321.230; awarding the RFPD its costs of suit; and for such other relief as this Court deems proper under the circumstances.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of May, 2018, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the court electronic filing system to counsel of record as follows:

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