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STATE OF NEW MEXICO  
COUNTY OF VALENCIA  
THIRTEENTH JUDICIAL DISTRICT

CITY OF BELEN, NEW MEXICO,

**Plaintiff,**

vs.

No. D-1314-CV-2013-00492

VILLAGE OF LOS LUNAS, NEW  
MEXICO, and LOS LUNAS VILLAGE  
COUNCIL,

**Defendants.**

**COMPLAINT FOR DECLARATORY JUDGMENT  
AND PRELIMINARY AND PERMANENT INJUNCTION**

COMES NOW the City of Belen, by and through its attorneys, Robles, Rael & Anaya, P.C. (Marcus J. Rael, Esq., Charles Rennick, Esq.), and states the following for its Complaint for Declaratory Judgment and Preliminary and Permanent Injunction:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff City of Belen, New Mexico (“City” or “Belen”), is a New Mexico incorporated municipality.
2. Defendant Village of Los Lunas (“Village” or “Los Lunas”) is a New Mexico incorporated municipality.
3. Defendant Village Council of Los Lunas (“Council”) is the duly-constituted governing body of Defendant Village.
4. This Court has jurisdiction over the matter pursuant to NMSA 1978, § 44-6-2 (Declaratory Judgment Act).
5. Venue is proper in this Court.

## **GENERAL ALLEGATIONS**

6. Plaintiff incorporates the allegations of paragraphs 1-5 as if set forth in full herein.
7. Both the City of Belen and the Village of Los Lunas have been engaged in planning for construction of a regional medical facility in the respective communities.
8. Pursuant to the provisions of the New Mexico Hospital Funding Act (“Act”), NMSA 1978, § 4-48B-9(B), a municipality may enter into an agreement with a county for the construction and operation of a jointly owned county-municipal hospital.
9. The City’s proposed hospital would conform to the provisions of § 4-48B-9(B) of the Act regarding a county-municipal hospital.
10. The Act provides for up to a 4.5 mill levy to be adopted by the county for operation and maintenance of a hospital.
11. On April 4, 2013, Defendant Los Lunas Village Council adopted Resolution 13-08, entitled “A Resolution Adopting a Position Statement Comparing the Proposed Valencia Regional Medical Center (VRMC) in Los Lunas and Belen Hospital” (“Resolution”).
12. The Resolution states its purpose as soliciting support for construction of a hospital in Los Lunas.
13. The proposed Los Lunas hospital, according to the Resolution, is to be privately owned, privately funded, and operated by Lovelace Health Systems.
14. Pursuant to the provisions § 4-48B-5(J) of the Act, the Los Lunas facility could enter into a Health Care Facilities Contract with Valencia County.
15. Pursuant to section 4-48B-12 of the Act, the Valencia County Commission may enact a tax levy of up to 4.5 mills for operation and maintenance of a hospital with which the

county has a Health Care Facilities Contract. Pursuant to section 4-48B-15 of the Act, the tax levy is subject to approval by the qualified electors of the county.

16. The “Financial Plan” criterion of the Resolution states that the Los Lunas hospital “will be profitable in year two, and will increase services and profitability in years to come without the mill levy funds,” and that the proposed Los Lunas hospital’s “5-year financial plan does not rely on the assumption that the mill levy will be renewed.”

17. The clear implication of the “Financial Plan” criterion is that the mill levy funding must initially be adopted and dedicated to the proposed Los Lunas hospital for at least two years.

18. The general nature of the Resolution is to compare the two communities in terms of identified criteria for siting of a regional medical center.

19. The stated objective of the Resolution is “to solicit the support of the citizens of Valencia County for the construction of a hospital in Los Lunas as the location that will be the most sustainable and with an operator that will be the most successful.”

20. The clear intention of the Council is to influence the public, voters and the County Commission against adopting funding mechanisms, including the mill levy, that would be used in support of a hospital in Belen.

21. In a table format, the Resolution lists nine categories of criteria that the Council believes are relevant to a comparison of the two municipalities as a hospital site.

22. In each category, the Resolution lists details that show Los Lunas to be a preferable site to Belen.

23. The information listed in the table in support of a Los Lunas hospital and in opposition to a Belen hospital is inaccurate, false and misleading.

24. Under the first category of “Location,” the Resolution states that a Los Lunas site was selected based on a county-wide site study, over six years of involvement in planning a hospital, and would service a population of 55,000 compared to service of the Belen site of only 20,000 persons.

25. The statement of site selection in Los Lunas is false and misleading since the identified owner, Miller Architects, does not own land in Los Lunas, has performed no engineering or environmental analysis, has obtained no traffic impact analysis, and will be required to obtain suitable property at a cost of more than one million dollars (\$1,000,000.00), none of which is identified in the Resolution.

26. Under the first category of “Location,” the Resolution states that the selection of the Belen site was done without a county-wide study, was based only on a commitment by the City to donate a piece of property, and that it is located in a known flooding area, implying that the City engaged in no meaningful site selection.

27. The City has, in fact, conducted a site study by Dekker, Perich, Sabatini Architects and an engineering analysis by Wilson and Co. The site is located adjacent to and with full access to Interstate 25 as well as the primary arterial roads in Belen, and the site study identified a service area of 75,000 residents. The City has invested over \$600,000.00 in purchasing the site, and over \$800,000.00 in roadway and drainage improvements recommended by Wilson and Co. Engineers. The engineering analysis provides for on-site storm water control and off-site drainage improvements to Christopher Road and Camino del Llano.

28. The Resolution falsely portrays the Location information of both the Los Lunas and Belen sites.

29. Under the second category of “Community Support,” the Resolution states that the City has not received letters of support from the residents or any other community in the county.

30. The City has, in fact, received letters or statements of support from the Town of Tome Land Grant and from the nearby municipality of Mountainair, as well as from numerous individuals. The voters also approved the proposed mill levy in an election that focused on the proposed county-municipal hospital in Belen.

31. Under the third category of “Funding,” the Resolution states that the proposed Los Lunas hospital will be privately funded and will not depend on issuing bonds for construction, while stating that the proposed Belen hospital depends on public financing through the issuance of revenue bonds.

32. The developers of the proposed Los Lunas hospital have in fact proposed funding options that include federal assistance, issuance of industrial revenue bonds, and use of the mill levy money to leverage loans.

33. For funding of the proposed Belen hospital, the City has proposed private financing, and in fact obtained a proposal from Ameris, one of the respondents to the City’s Request for Interest, that would utilize neither the City’s nor the County’s bonding capacity.

34. Both proposed facilities will utilize mill levy money.

35. The Resolution falsely portrays the funding proposals for both Los Lunas and Belen.

36. Under the fourth category of “Operator,” the Resolution states that the proposed Belen operator, Ameris, has no New Mexico connections while the proposed Los Lunas operator, Lovelace Health Systems, is a known entity in the state.

37. Both Ameris and Lovelace, in fact, are controlled by out-of-state entities.

38. Lovelace representatives, presenting information to the Council, have been unable to identify how many of the county's 75,000 residents would qualify for the Lovelace Health Plan or how many of the residents would be able to use the Los Lunas hospital within or outside of the plan.

39. The facts show that the proposed Belen operator, Ameris, has operated 23 hospitals specializing in rural health care while the proposed Los Lunas operator, Lovelace, operates 6 facilities, none of which are rural.

40. The Resolution states that Lovelace will not have to recruit doctors to the Los Lunas facility as they already have a staff of doctors, including specialists.

41. The statement regarding doctors on Lovelace's staff is misleading in that Lovelace has terminated its relationship with ABQ Health Partners, with a loss of approximately 185 physicians.

42. The Resolution states that Ameris must hire and recruit outside doctors for the proposed Belen hospital, and projects that Ameris will have a total of 11 doctors.

43. The Belen Feasibility Study in fact shows that 40 physicians have stated that they would practice at the proposed Belen hospital.

44. The Resolution falsely portrays the levels of physician staffing anticipated at both proposed facilities.

45. Under the sixth category of "Feasibility Study," the Resolution states that the proposed Los Lunas hospital has completed a comprehensive feasibility study with construction pricing, demographic analysis, job creation and long-term sustainability.

46. The Council has, in fact, released no feasibility study with sufficient detail to support the representations in the Resolution, and in fact has issued conflicting statements as to whether it will require use of the mill levy money.

47. Under the sixth category of “Feasibility Study,” the Resolution states that the Belen Feasibility Study lacks detail about its sustainability.

48. The City has, in fact, obtained a 120-page feasibility study from Ameris and made it publicly available. The study delineates the proposed distribution of mill levy funds and projects net positive revenue by the third year.

49. Under the ninth category of “Developer,” the Resolution states that the proposed Belen operator, Ameris, has been involved in only 12 hospitals, and that they are in the process of selling one and managing another in bankruptcy, and that all of their work has been done east of the Mississippi River.

50. Ameris has, in fact, associated with the local architectural firm of Dekker, Perich, Sabatini, which has major hospital and health care facility experience throughout New Mexico, including the recently-completed Presbyterian Rust Medical Center in Rio Rancho. The allegations of Ameris selling or returning 9 hospitals to the community is misleading. Part of Ameris’s business is to step in and manage struggling hospitals and then return them to their owners upon restoring financial success.

51. The Resolution falsely portrays the qualifications of the proposed developers, and tends to mislead the public as to those qualifications.

52. The inaccurate, false and misleading information listed in the Resolution will have the probable effect of influencing the public, the voters of Valencia County, and the Valencia County Commission against construction of a county-municipal hospital in Belen.

## **COUNT 1—DECLARATORY JUDGMENT**

53. Plaintiff incorporates the allegations of paragraphs 1-52 as if set forth in full herein.

54. The governing body of a municipality is authorized by NMSA 1978, § 3-17-1(B) to adopt ordinances or resolutions for the purpose of “providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants.”

55. The New Mexico Supreme Court held in *State ex rel. Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 119 N.M. 150, 157-58, 889 P.2d 185, 192-93 (1994), that legislative acts of a municipality are reviewable by the courts and reversible if based on clear abuse of discretion.

56. The Council adopted the Resolution knowing that the factors listed were inaccurate, false and misleading, or else in reckless disregard of the truth.

57. The Council’s action in adopting the Resolution amounted to a clear abuse of discretion.

58. The City prays for a declaratory judgment that the Council’s action in adopting the Resolution exceeded its authority under section 3-17-1(B), is a clear abuse of discretion, and is of no force and effect.

## **COUNT II—INJUNCTIVE RELIEF**

59. Plaintiff incorporates the allegations of paragraphs 1-58 as if set forth in full herein.

60. The Council’s action in adopting the Resolution is intended to interfere with the City’s ability to successfully finance the construction of a county-municipal hospital and to

obtain mill levy funding for the operation and maintenance of a county-municipal hospital pursuant to the provisions of the Act.

61. The presumptive validity of the Resolution will have the probable effect of unduly influencing the public, potential funding sources, the voters, and the Valencia County Commission to reject the City's lawful pursuit of financing for construction and operation of a county-municipal hospital.

62. The consequences to the citizens of the City of loss of financing for construction and operation of a county-municipal hospital cannot be measured in damages.

63. The City has no adequate remedy at law.

64. The City prays for issuance of a preliminary and permanent injunction, ordering the Council to rescind its Resolution and further enjoining the Council from adopting any resolution that portrays the City's efforts at lawfully siting, financing, constructing and operating a county-municipal hospital in an inaccurate, false and misleading manner.

#### **PRAYER FOR RELIEF**

The City of Belen prays for the judgments described herein, for its costs, and for such other relief as the Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

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