



ORIGINAL

**PROPOSAL TO PROVIDE
LEGAL SERVICES TO
PAPIO-MISSOURI RIVER
NATURAL RESOURCES DISTRICT**

February 14, 2014

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KUTAK ROCK LLP

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February 14, 2014

VIA COURIER

Chairperson Jim Thompson
Ad-Hoc Selection Subcommittee
Papio-Missouri River Natural
Resources District
8901 South 154 Street
Omaha, NE 68138

Re: Proposal to Provide Legal Services

Chairperson Thompson:

Kutak Rock LLP is pleased to submit the enclosed response to the Request for Proposals – Legal Services from John G. Winkler, General Manager of the Papio-Missouri River Natural Resources District (the “District”). We are grateful for the opportunity to submit our firm’s qualifications to represent the District in a range of legal matters.

We believe our firm is exceptionally well-qualified to serve as the District’s legal counsel. The firm conducts a full-service, national law practice, encompassing everything from advice, planning and litigation relating to real estate, inverse condemnation, environmental law, water law, public finance, employment, construction, contract and administrative law and government disputes. Kutak Rock is the largest law firm in Nebraska, and maintains active practices in 15 other locations as well.

If selected to provide services to the District, the firm would assign attorneys primarily from the firm’s Omaha office. To lead the engagement, we propose Danielle J. Amorena-Kenny, a partner in the firm’s real estate department who has deep experience in real estate transactions, real estate finance, creditors’ rights, commercial and residential foreclosure matters and real estate litigation. As needed, we would also call on the services of other lawyers in Omaha and other offices who conduct specialty practices and whose expertise we would place at the District’s disposal.

Kutak Rock has served as counsel to governmental entities on a wide range of matters, including administrative matters, real estate, personnel matters, finance (including leases and bond issuances), licensing, litigation, advice to boards and commissions, open meeting laws,

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contracts, water law, drafting of rules, regulations, ordinances and legislation, and intergovernmental relations.

For example, since 1979 we have represented the Nebraska Investment Finance Authority (“NIFA”) as general counsel as well as bond counsel. NIFA is a statewide public financing instrumentality charged with providing financing for various types of projects that address the public purposes identified in the NIFA enabling legislation. In the role of general counsel, Kutak Rock keeps NIFA apprised of legal developments that affect the business of NIFA, and advises NIFA with respect to legal matters that arise in the day-to-day operation of its business. This advice covers a broad range of the legal spectrum, including advice with respect to open meetings and public records laws, employment matters, intellectual property (including copyright laws and social media policy matters), retirement, health and other employee benefits, privacy laws, lease contracts, agreements with respect to the distribution and allocation by NIFA of resources (both Nebraska state and federal, such as the low-income housing tax credit), litigation/mediation matters, insurance matters, real estate matters, mortgage loan lending regulations and the drafting of state and federal legislation.

We have also represented other Nebraska natural resources districts including the Upper Republican Natural Resources District and the Nebraska Cooperative Republican Platte Enhancement Project (an entity created pursuant to the Nebraska Interlocal Cooperation Act). In addition, we have experience with Nebraska’s clean water and drinking water state revolving loan programs, serving as NIFA’s counsel with respect to these programs since their inception.

The firm maintains an active, full-service real estate practice, including real estate law and related aspects of real estate finance, bankruptcy and commercial law. The firm’s practice extends to all asset classes of real estate. Real estate partners in Omaha would be available to provide all services the District should require with respect to the District’s operations. The Omaha office alone has 30 attorneys dedicated to the practice of real estate. Specifically, our real estate lawyers are actively involved in identifying, analyzing and structuring project-specific issues; preparing and negotiating purchase and sale agreements, ground, operating and financing leases, and other transaction and development documents, including easements, covenants and restrictions; reviewing and negotiating title insurance coverage and surveys; reviewing and analyzing environmental matters; reviewing and analyzing all aspects of real estate diligence materials; and coordinating the transaction with the client, other transaction participants and their counsel, third-party service providers and other consultants involved in the transaction.

Kutak Rock attorneys also are well-versed in the issues associated with the acquisition and sale of environmentally impaired property, the due diligence associated with such transactions and risk allocation mechanisms to protect clients from environmental liability for which they have no direct responsibility. In addition, our expertise extends to the review of environmental analyses prepared pursuant to the National Environmental Policy Act (NEPA) and associated state statutes, environmental permitting, placement of pollution legal liability insurance policies and negotiation of indemnity agreements among the parties.

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Kutak Rock's practice in the area of environmental law encompasses all aspects of environmental counseling, including due diligence, the design, direction and review of environmental site assessments, regulatory compliance and approvals and other investigations prepared by environmental consultants. We advise clients regarding administrative and judicial options and strategies in environmental matters. As our proposal explains, we have particular expertise with strategic approaches to environmental analyses, document review and litigation pertaining to NEPA. In addition, we have substantial experience representing governmental agencies in connection with environmental impact statements (EIS's) and environmental assessments (EA's). Such representation includes affirmative and defensive litigation arising in the above contexts.

The firm's Litigation Department represents governmental entities, Fortune 500 corporations, insurance companies, health care providers and systems, investment banking firms, manufacturers, national retailers, financial institutions and many other types of businesses. We see ourselves as partners with our clients and strive to obtain their objectives, while providing advice and counsel regarding the risks and benefits of proceeding with a legal resolution of any litigated matter. We have significant experience obtaining successful results for our clients in trial and in arbitration as well as through negotiated resolutions. Firm litigators have deep experience in a wide variety of litigation involving real estate, property disputes, water law matters, and administrative litigation with state agencies. For example, the firm represented the State of Nebraska along with the Nebraska Attorney General's office in the case of *State of Kansas v. Nebraska and Colorado, No. 126 Original (Sup. Ct. U.S.)*. The firm assisted the Attorney General in responding to the claim by the State of Kansas that the State of Nebraska had overused its allocation of water under the applicable compact between Kansas and Nebraska on water use in the Republican River. After substantial assistance with document review and assessment of the claims made by the State of Kansas, the Attorney General's office chose to move forward with a settlement in the matter. In addition, Patrick Griffin, a litigation partner, was appointed a Special Assistant Attorney General for the State of Nebraska some years ago and successfully represented the Office of the Governor and the Executive Council of the State Legislature in an original action challenging four constitutional amendments approved by the voters of the State of Nebraska.

With respect to general real estate litigation matters, the real estate litigation attorneys are at the forefront of risk management analysis for our real estate clients, derived from decades of trial experience. Indeed, the most efficient litigation strategy is often to avoid it altogether. To achieve this goal, our attorneys have assisted in negotiating numerous leases and other real estate agreements together with policies and guidelines to minimize litigation exposure to our clients.

As our proposal explains, litigators in our Irvine and Scottsdale offices have particular expertise representing municipal governments in inverse condemnation and eminent domain matters, and we would leverage their expertise as needed. The senior litigation attorney with whom we would consult on inverse condemnation matters has decades of experience representing municipalities in such matters. To cite a noteworthy case described in our proposal, the firm's successes include the successful defense of a California city in an inverse

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condemnation action brought by 25 plaintiffs seeking \$35 million in damages. The firm's client received a full defense verdict. And, in probably the largest inverse condemnation case in the history of the State of Nebraska, in the 1970s the firm represented the Village of Niobrara and local landowners, obtaining a judgment against the federal government over the elevated groundwater and resultant flooding caused by the Gavins Point Dam.

Further, Kutak Rock's expertise in public finance is nationally recognized. Nationwide, over 100 firm attorneys practice in the area of public finance, representing states, cities, counties and special districts. We note that in 2012 and 2013 attorneys in the Omaha office represented the Nebraska Cooperative Republican Platte Enhancement Project and the Upper Republican Natural Resources District in several bond financings.

In the area of employment law, Kutak Rock handles day-to-day employment issues, discrimination and sexual harassment claims, and matters relating to workers' compensation, the Americans with Disabilities Act, the Family and Medical Leave Act, the WARN Act, the Equal Pay Act and a host of other laws bearing on workplace employment. Firm lawyers regularly advise clients on employment matters and prepare a wide variety of employment policies as well.

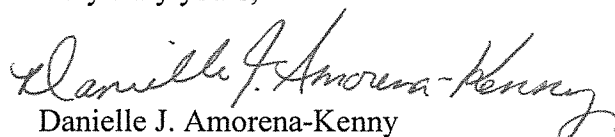
Kutak Rock also maintains strong national practice groups in construction law and contract law, with experts in these areas practicing in the Omaha office.

In addition, a number of Kutak Rock lawyers, many of those in the Omaha office, have experience drafting legislation at both the federal and state levels. In most cases such legislation has dealt with governmental organization matters, such as the legislation creating NIFA and implementing tax increment financing laws. On a related note, the firm has extensive experience drafting joint powers agency agreements (such as that which created the American Public Energy Agency).

If selected to serve as the District's counsel, we would be committed to providing the District with timely, substantive and creative responses to any legal issue it may encounter. Our depth of experience, level of expertise in a variety of substantive areas and desire to serve as the District's counsel will ensure that your needs are met in an efficient and cost-effective manner.

The firm is pleased to respond to your RFP and would welcome the opportunity to explore further with you the specifics of our proposal. If you should have any questions about our proposal or about Kutak Rock, please call me at 402-346-6000 or e-mail me at danielle.amorena@kutakrock.com.

Very truly yours,


Danielle J. Amorena-Kenny

Enclosure

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KUTAK ROCK LLP

PROPOSAL TO PROVIDE LEGAL SERVICES TO

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

INTRODUCTION

Kutak Rock LLP is a national law firm of approximately 500 lawyers with offices in Omaha and 15 other cities nationwide, including Washington, D.C. The firm serves local, regional and national clients in a multidisciplinary practice. While we enjoy a nation-wide presence, Kutak Rock remains firmly planted in Nebraska, maintaining its main office in Omaha. However, we encourage our attorneys to take advantage of the national resources and broad range of expertise the firm offers in order to provide the best legal services possible to our clients wherever they are located.

Founded as a three-lawyer practice in Omaha in 1965, the firm has risen to prominence through its dedication to service and its ability to develop innovative solutions to satisfy clients' needs. Kutak Rock's expansion to cities across the country, paralleling the firm's growth in reputation, demonstrates the entrepreneurial spirit that is the firm's hallmark.

Kutak Rock has represented hundreds of state and local governmental units, a substantial number of Fortune 500 corporations, every major investment banking firm in the United States, major European, Asian and domestic money-center banks, insurance companies, national real estate investors and developers, major national franchising enterprises and numerous other financial institutions and businesses.

The firm strives to maintain the highest standards of professional responsibility in all of its engagements. Robert Kutak, a founder of the firm, chaired the American Bar Association commission that developed the new Model Rules of Professional Conduct and rewrote ethical standards for lawyers.

Several members of Kutak Rock have served as government officials on the federal and state levels. The attorney ranks in various offices of the firm include a former United States Senator from the State of Nebraska, a former United States Attorney from the District of Nebraska and former officials of the Internal Revenue Service, Securities and Exchange Commission, Federal Communications Commission and Department of Defense.

The firm is rated "AV" by Martindale-Hubbell—the highest rating that independent organization confers on a law firm.

Kutak Rock's Web site at www.kutakrock.com contains information on every area of law in which the firm conducts a practice as well as a profile and e-mail link for each attorney in the firm.

The following proposal, submitted in response to Request for Proposals for Legal Services from the Papio-Missouri River Natural Resources District (the "District"), contains Kutak Rock's qualifications to serve as legal counsel to the District for a range of matters. We have responded in sequence to the information requests in the District's RFP.

1. Identification of Offeror

The name, address and telephone number of the offeror are as follows:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
402-346-6000

2. Principals of Firm

Currently, the firm has 304 partners who technically may all be considered principals. David Jacobson, based in Omaha, is Chairman of the firm's Executive Committee. The principals we propose to have a significant role in this engagement include Danielle J. Amorena-Kenny, Walter L. Griffiths and John J. Wagner.

3. Size of Firm

As of January 31, 2014, Kutak Rock had 490 attorneys and 411 non-attorney managers and staff members situated in 16 offices across the country, including Omaha.

The Omaha office, which would serve as the base for representation of the District, houses 160 lawyers and approximately 150 managers and non-attorney staff members. Kutak Rock was established in Omaha in 1965, and the Omaha office remains the firm's largest office and its administrative center.

4. Principal Practice Areas

Kutak Rock is a full-service law firm. The firm maintains expertise in the areas of general corporate law, corporate finance, real estate, litigation, public finance, securities, health care, intellectual property and technology law, labor and employment law, employee benefits and pension plan law, securitization, tax, tax credits, banking, bankruptcy, insurance, antitrust, environmental law, federal practice, international trade and government relations. The attorneys of Kutak Rock work together in integrated, national practice groups to maintain and enhance their technical expertise, and to reinforce and support one another in achieving client objectives.

5. Eminent Domain Cases Firm Has Handled

Kutak Rock represents and consults with various public entities and private corporations with regard to both eminent domain and inverse condemnation matters. Our eminent domain/inverse condemnation team has handled many such cases on behalf of municipalities and related public joint powers organizations. Our experience with inverse condemnation cases includes both traditional inverse condemnation cases that involve a physical taking of or damage to real property, and regulatory taking cases based on the enforcement of municipal regulations. The many successful results achieved by this trial team are due to strong advocacy, substantial experience, careful preparation of experts, and presentation of complex technical evidence in court in an understandable format.

Recent cases include the following:

- Consultation with a redevelopment agency with regard to an anticipated eminent domain action, including drafting the Resolution of Necessity and development of a procedural outline to complete the condemnation process.
- Defense of a city and its redevelopment agency in an action filed by a group of displaced tenants seeking to recover statutory relocation costs caused by agency's condemnation actions. Case settled during litigation and prior to trial.
- Defense of a city in inverse condemnation action alleging that a "regulatory taking" resulted from imposition of a moratorium on development in a known ancient landslide area. The plaintiffs contended that the regulation constituted a taking under *Lucas v. Southern Carolina Coastal Council*, (1992) 505 US 1003, and *Penn Central Transportation v. City of New York*, (1978) 438 US 104. Twenty-five individual plaintiffs owning 16 residential parcels sued seeking over \$35 million in damages. The trial was a bench trial which lasted three months and resulted in a full defense judgment in favor of the city.
- Defense of a city in an inverse condemnation action in which nearly half of the plaintiff's seven-acre residential property was damaged by a landslide. The plaintiff contended that a city landfill operation had activated the landslide and the landslide prevented development of the property, thereby rendering it valueless. The city agreed to admit liability, but disputed the allegation that the landslide eliminated all value, and contended that the plaintiff had previously been fully compensated from the settlement of a prior lawsuit involving a prior landslide. The case was tried to a jury. The jury found in favor of the plaintiff due to the admission of liability by the city, but rendered a verdict of zero damages.
- Representation of large retail corporation with regard to eminent domain action initiated by a city's redevelopment agency directed at a blighted shopping center in which the client's retail store was located. Negotiations resulted in abandonment of the condemnation actions.

- Defense of a city in an action seeking damages under theories of inverse condemnation and civil rights violations under 42 USC 1983. The action was brought by an owner of a four-acre residential parcel contending that the city's actions in processing his subdivision application constituted a taking under inverse condemnation, and a violation of his equal protection rights. We succeeded in eliminating the inverse condemnation action by motion for summary judgment. The case proceeded to jury trial on the civil rights cause of action. The jury returned a verdict against the city in the amount of \$220,000, which was reduced by way of post-verdict motions on behalf of the city to \$20,000.
- Defense of a city in an action by four homeowners who sustained flood damage during heavy rainstorms. The plaintiffs contended that the flooding occurred due to the inadequacy and deteriorated condition of a city's storm drain system, and they sought recovery under theories of inverse condemnation and dangerous condition of public property. An economic settlement was reached prior to trial.
- Defense of a city and a redevelopment agency in an action filed by a group of displaced tenants seeking to recover statutory relocation costs caused by the agency's condemnation actions. Case settled during litigation and prior to trial.
- Multiple cases defending cities sued for inverse condemnation and nuisance by private property owners due to landslides, slope failures or flooding due to the operation of the cities' storm drain systems, sewer systems, water systems or other public improvements. All were litigated cases resulting in settlements prior to trial.
- Defended a city sued in inverse condemnation based on changes to a city's zoning ordinance and denial of plaintiffs Conditional Use Permit Application. Case dismissed at demurrer stage.
- Defended a city sued in inverse condemnation and nuisance based on a city regulation protecting wildlife within the city. Case went to trial resulting in plaintiff's verdict, but the city prevailed on appeal with a defense judgment.
- Defended a city sued by private homeowners who contended the city's storm drain system beneath the city roadway caused subsidence damage to their homes. They sued the city in inverse condemnation and dangerous condition of public property, seeking to recover the cost of repair or diminution in value of their property. The case was tried to verdict, resulting in a compromise award.

In addition to the more recent engagements described above, in the 1970s Kutak Rock successfully represented landowners and owners of crops on riparian and nonriparian fast lands situated adjacent to the Missouri and Niobrara Rivers, near Niobrara, Knox County, Nebraska. The landowners brought an inverse condemnation action against the United States for compensation for the taking of their land caused by frequent flooding that naturally resulted from the U.S. Army Corps of Engineers' control of the flow of river water through Missouri River dams. The lawsuit involved the application of the infrequently used concept of the navigation servitude to fresh water flowing bodies. *Barnes v. United States*, 538 F.2d 865 (Ct. Cl. 1976).

6. Proposed Working Group

For the prospective engagement with the District, we propose that Danielle J. Amorena-Kenny, a partner in the Omaha office, serve as the primary relationship attorney and principal contact for District officials with respect to the overall engagement. Ms. Amorena-Kenny would direct and coordinate the participation of other members of the District working group.

The following table identifies practice areas that we believe the engagement would involve as well as the Kutak Rock lawyers who would be available to handle matters in such areas:

Practice Area	Attorney(s)
Real Estate	Danielle J. Amorena-Kenny, Walter L. Griffiths, Buck Heim, Christopher B. Kelly, Daniel S. Murow, Richard J. Rosenblatt
Environmental Law	Kevin E. Burr, Barry P. Steinberg
Eminent Domain/Inverse Condemnation	Edwin J. Richards, Jake L. Sherrard
Other Litigation, including civil litigation and administrative appeals	Brian C. Buescher, Thomas H. Dahlk, Patrick B. Griffin, Thomas J. Kenny
Construction Law	Jeremy T. Fitzpatrick
Public Finance/ Governmental Relations	Curtis L. Christensen, Joel W. VanderVeen, Dawn M. Roth, John J. Wagner, David K. Karnes, Patricia S. Peterson
Employment Law	Marcia A. Washkuhn

Following are résumés of the lawyers identified above.

REAL ESTATE

Danielle J. Amorena-Kenny is a partner in the firm's Omaha office. Ms. Amorena-Kenny practices in the areas of commercial real estate and bankruptcy, representing lenders in connection with the purchase and sale of real estate, sale-leaseback transactions, secured financing, loan restructures and workouts. She also represents clients in bankruptcy proceedings, contract litigation and asset recovery actions. In the wake of the financial downturn of 2008, she coordinated successful large-scale quiet title and foreclosure actions in Michigan and Ohio, in addition to prosecuting multiple foreclosure actions in Nebraska (judicial and non-judicial). She earned a bachelor's degree, *magna cum laude*, from the University of Nebraska at Kearney in 1993; a master's degree, *summa cum laude*, from the University of Nebraska at Omaha in 1998; and a law degree, *cum laude*, from Creighton University School of Law in 2001. She is licensed to practice in Nebraska.

Walter L. Griffiths, a senior partner in the Omaha office of Kutak Rock, has devoted his career to the representation of developers, credit enhancers and governmental entities in structuring and closing real estate transactions, including public/private transactions. A member of the firm since 1977, Mr. Griffiths represents major commercial lenders and credit enhancers in structuring and closing complex multi-state real estate financings and asset-backed transactions. He is the lead real estate lawyer for the firm's representation of the financial advisor to the Navy for military housing privatization transactions. He has also represented developers, bond underwriters, lenders and credit enhancers in structuring and closing Army and Air Force military housing privatization transactions, and was the lead counsel for the legal team which represented the developer/borrower for the Offutt Air Force Base housing privatization. He served as lead lender's counsel in the *Project Finance* magazine "2009 North America Real Estate Deal of the Year" transaction for the Privatization of Army Lodging financing. Mr. Griffiths was awarded his bachelor's degree from Kearney (Nebraska) State College in 1968 and earned his law degree, *magna cum laude*, from Creighton University in 1977.

Buck Heim, a partner in the firm's Omaha office, has significant experience in real estate acquisition, disposition and development matters. He has negotiated and closed numerous transactions, representing national and regional health systems and national real estate development companies throughout the country which are actively involved in the acquisition, development and construction of medical real estate. In addition, Mr. Heim has experience representing hospital clients in connection with hospital/physician joint venture real estate transactions. He also has experience negotiating and drafting American Institute of Architects ("AIA") documents, development documents, architect contracts, construction contracts and construction manager contracts. For the past several years he has been listed in *Chambers USA: America's Leading Lawyers for Business*. Mr. Heim received his B.A. in finance, with distinction, from the University of Nebraska at Lincoln in 1990 and his J.D., with distinction, from the University of Nebraska College of Law in 1994.

Christopher B. Kelly is an associate in the real estate department of Kutak Rock's Omaha office. Mr. Kelly earned a bachelor's degree from New Mexico State University in 2003 and a law degree from the University of Nebraska College of Law in 2009. He is licensed to practice in Nebraska.

Daniel S. Murow, an associate in the Omaha office, recently joined the firm. Mr. Murow, a member of the real estate department, assists senior attorneys with the firm's real estate engagements. He earned a bachelor's degree from the University of Wisconsin in 2010 and a law degree from the University of Nebraska College of Law in 2013. He is admitted to practice in Nebraska.

Richard J. Rosenblatt, a partner in Kutak Rock's Omaha office, joined the firm in 1998. Mr. Rosenblatt devotes his practice to real estate matters, concentrating on commercial and corporate real estate acquisition and development transactions. He has experience in the preparation of purchase agreements, easements, leases and other project right-of-way documents and the preparation of and assistance with the administration of intergovernmental agreements, project construction contracts, professional service contracts and cooperative agreements with developers and others. He currently provides such services to various corporate clients. Prior to his affiliation with Kutak Rock, he served as in-house real estate counsel to First National Bank

of Omaha, a national lender with real estate concerns in multiple states. He earned an undergraduate degree from Indiana University in 1990 and a law degree from the University of Nebraska College of Law in 1993.

ENVIRONMENTAL LAW

Kevin E. Burr, a partner in Kutak Rock's Omaha office, has been practicing general corporate, regulatory and health care law for over 20 years, representing clients in a variety of financial and business transactions, state and federal regulatory matters and healthcare transactions and compliance matters.

From 2005 through 2009, he served on the Board and as counsel to the Carter Lake Preservation Society ("CLPS"). CLPS is a 501(c)(3) tax-exempt, nonprofit entity that, as its mission, was established to educate and involve the public regarding reclamation of, planning for and continual use of the watershed area around Carter Lake in North Omaha, Nebraska and Carter Lake, Iowa. While he no longer serves on the Board, he continues to be an active member of CLPS and is in close contact with the Board members who still coordinate water management projects and issues for Carter Lake.

CLPS was the driving force in both Iowa and Nebraska for creation of a coalition of stakeholders to reclaim and clean up Carter Lake in compliance with state and federal Clean Water laws and environmental protection regulations. CLPS was formed in 2005 with \$100,000 in private donations and used that money to put together an operating plan to compel the states of Nebraska and Iowa to comply with, among other things, the Clean Water Act and federal and state environmental protection laws and regulations.

Early on in this process, the Papio-Missouri River Natural Resources District was one of those stakeholders that CLPS identified and approached to become actively engaged in the Carter Lake reclamation and restoration project. Other stakeholders included the Iowa Natural Resources Conservation Service, the Iowa Department of Natural Resources, the West Pottawattamie County Iowa Extension Service, the University of Nebraska-Lincoln Extension in Douglas/Sarpy Counties, the Nebraska Department of Environmental Quality, the Nebraska Game and Parks Commission, the Nebraska Department of Natural Resources, the Metro Area Planning Agency, the West Pottawattamie County Soil and Water Conservation District, the Omaha Public Works Department and the Omaha Parks, Recreation and Public Property Department.

As a member of the CLPS Board and as counsel to the Board in this multi-governmental/multi-agency project, Mr. Burr was exposed to and assisted with the review, discussion, recommendation and negotiation of the professional service agreements, project contracts, intergovernmental arrangements and cooperative agreements that were critical to the Carter Lake reclamation project.

Mr. Burr earned his B.A. and M.B.A. degrees from the University of South Dakota. He was awarded his J.D., with honors, from the University of South Dakota in 1989. He is licensed to practice in Nebraska, South Dakota and Colorado.

Barry P. Steinberg is a retired Army Colonel with over 26 years active duty legal experience in the Judge Advocate General's Corps (including years supervising its environmental lawyers) and 24 years' experience in a private practice. He is a partner in Kutak Rock's Washington office, where he brings his environmental, insurance, litigation and military expertise to the firm. Mr. Steinberg specializes in environmental law, including base closure, contractor indemnification, environmental compliance and enforcement, National Environmental Policy Act (NEPA) and environmental insurance. He has represented a number of communities involved in base closure consideration and reutilization over the past 24 years. In addition, his clients have included defense contractors involved in environmental disputes with the United States and communities involved in the level of remediation to be achieved at former Defense facilities. Mr. Steinberg's representation of state and municipal governments in environmental matters, which is typically associated with the transfer of former military installations, includes the provision of legal advice concerning environmental risk allocation, and the adequacy of coverage and enforceability of insurance and surety bond products to protect governmental entities from personal injury, property damage and remediation liability claims arising from pre-existing real property environmental impairments. Mr. Steinberg received a B.A. from the University of Richmond in 1963 and an LL.B from the T. C. Williams School of Law, University of Richmond, in 1966. He is admitted to practice before the United States Supreme Court, United States Court of Appeals for the First, Third and Federal Circuits, United States Court of Federal Claims, United States Court of Military Appeals, United States Court of Veterans Appeals, District of Columbia Court of Appeals, State of Virginia Supreme Court of Appeals, and various United States district courts.

EMINENT DOMAIN/INVERSE CONDEMNATION

Edwin J. Richards is a litigation partner in Kutak Rock's Irvine, California office. He has extensive litigation experience and has tried to conclusion well over 100 jury trials. His litigation practice emphasizes the representation of public entities in a broad spectrum of cases, including cases in inverse condemnation, premises liability, employment and discrimination, land use and zoning, environmental, constitutional and civil rights, real estate disputes, and public works contracts. He has represented municipalities, redevelopment agencies, city council members, city attorneys, city managers and city staff members. In the private sector he has represented private corporations as well as officers and directors. Mr. Richards graduated from California Western University School of Law, where he earned a J.D. degree in 1968, and served as an attorney with the United States Army Judge Advocate General's Corps (JAGC). He is admitted to practice in all California state and federal courts and is a member of the American Board of Trial Advocates (ABOTA). His reported cases include: *Hassoldt v. City of Rolling Hills*, 2004 WL 2223057 (Cal. App. 2004); *Elsinore Christian Center v. City of Lake Elsinore*, 291 F. Supp. 2d 1083 (C.D. Cal. 2003); *Orr v. Brigham Young Univ.*, 960 F. Supp. 1522 (D. Utah 1994); *Thomas v. Edington Oil Co.*, 73 Cal. App. 3d 61 (1977). Mr. Richards is licensed in California.

Jake L. Sherrard, a litigation partner in Kutak Rock's Scottsdale office, joined the firm in 2012. He began his career during the heightened period of construction defect litigation in 2002 and defended several nationally recognized general contractors in complex litigation matters, including several class actions. In 2004 Mr. Sherrard broadened his practice to include a variety of commercial litigation matters with a heavy emphasis on litigation involving the power

of eminent domain. During his tenure at his previous firm, Mr. Sherrard represented the property owners in an eminent domain proceeding brought by the City of Tempe for purposes of economic redevelopment. The case was the subject of intense local scrutiny as it was the first attempt by a municipality in the State of Arizona to condemn property for the purposes of economic redevelopment after the federal Supreme Court's ruling in *Kelo v. City of New London*, which itself was the subject of intense national scrutiny and debate. Mr. Sherrard represented the property owners throughout the course of the litigation, securing a victory at the trial level and preserving it upon review by the Arizona Supreme Court. He earned a bachelor's degree from Northern Arizona University in 1994 and a law degree, *cum laude*, from California Western School of Law in 2002. He is licensed to practice in Arizona and California.

OTHER LITIGATION

Brian C. Buescher, a partner, joined Kutak Rock in 2000 after graduating from Georgetown University Law Center, where he served as Editor-in-Chief of the *Georgetown Journal of Legal Ethics*. Mr. Buescher has deep roots in agriculture and leads the firm's agribusiness litigation practice. He was raised on a swine, cattle and farming operation in rural Nebraska, giving him particular knowledge of the agribusiness industry. He has used his agribusiness background and knowledge in his representation of agribusiness clients in environmental claims, numerous crop fertilizer cases, including products liability claims, personal injury matters involving a Fortune 200 agribusiness client, significant cases involving breach of contract on corn contracts and livestock carcass contracts, meat warehousing matters, Packers and Stockyards Act claims, class-action lawsuits, issues related to sanitary and improvement districts relating to packing plant waste, insurance matters related to livestock loss claims and farm/ranch general liability policies, several real estate matters involving agriculture, including claims against a Fortune 500 agribusiness client relating to issues related to a former fertilizer facility, claims of adverse possession on farmland, claims involving various aspects of ethanol facilities, claims involving disputes with railroads over shipping of agricultural commodities, and banking matters involving agribusiness, among other matters.

Mr. Buescher is admitted to practice in state and federal courts in Nebraska and Iowa, as well as the United States Court of Federal Claims and the United States Bankruptcy Court for the District of Nebraska. He has experience as lead and assisting attorney in bench and jury trials in various jurisdictions.

Thomas H. Dahlk, who is of counsel in Kutak Rock's Omaha office, is a trial lawyer who focuses on cases involving complex business transactions. He has successfully obtained verdicts for clients in federal and state courts and provided litigation strategy and multidistrict litigation management for clients in the banking, mutual fund and securities industries. His cases have ranged from "bet-the-company" civil cases involving complex legal theories to obtaining an acquittal in a bank fraud criminal case. He has also represented financial services corporations, numerous investor groups and individual plaintiffs and defendants.

Mr. Dahlk earned a bachelor's degree, with distinction, from the University of Wisconsin in 1974 and a law degree, *magna cum laude*, from Creighton University School of Law in 1977. He is admitted to practice in Nebraska; the U.S. District Court, District of Nebraska; the U.S. Court of Appeals, Eighth Circuit; the U.S. Court of Appeals, Tenth Circuit; the U.S. Court of

Appeals, Eleventh Circuit; and the U.S. Supreme Court. He is listed in the current directories of both *Chambers USA: America's Leading Lawyers for Business* and *Benchmark Litigation*.

Patrick B. Griffin, a partner in the Omaha Litigation Department, leads the Department's Financial Services Practice Group. He regularly provides direct defense and supervisory litigation services and risk management advice to securities broker-dealers and clearing firms, investment advisors, insurers, real estate developers, banks and other financial institutions and a major bond insurer. Mr. Griffin has successfully defended a broad spectrum of federal and state securities law claims in court and arbitration proceedings, ranging from retail customer suits against broker-dealers to claims of institutional investors arising out of complex financial transactions. He also has represented financial services clients in prosecuting claims in state and federal courts, both locally and nationally, and has secured multimillion-dollar recoveries on their behalf by settlement, judgment and jury verdict.

In 1996, Mr. Griffin was appointed a Special Assistant Attorney General for the State of Nebraska. In that capacity, he successfully represented the Office of the Governor and the Executive Council of the State Legislature in an original action challenging four constitutional amendments approved by the voters of the State of Nebraska.

Mr. Griffin earned his J.D. from Creighton University School of Law in 1985. He is admitted to practice in Nebraska and before the District Court for the District of Nebraska, the Courts of Appeals for the Sixth, Eighth and Federal Circuits, the United States Tax Court and the United States Supreme Court.

Thomas J. Kenny, a partner in Kutak Rock's Omaha office, is Co-Chair of the firm's national Health Care Litigation Group and Co-Chair of the national Government Disputes Group. He currently serves as Vice Chairman of the Healthcare Liability and Litigation Practice Group of the American Health Lawyers Association (AHLA).

Mr. Kenny represents corporate and individual clients in complex litigation and class actions against private and governmental adversaries, with an emphasis on representing health care providers, government contractors, financial institutions, corporate executives and licensed professionals. He regularly represents clients in internal and governmental investigations, and advises clients on risk management strategies and regulatory compliance. Mr. Kenny devotes a significant portion of his practice to administrative litigation with various government agencies, both at the state and federal level.

Mr. Kenny has successfully represented clients in multimillion-dollar bid protests and has represented numerous clients in internal and governmental investigations and related litigation in the health care, financial services and other highly regulated industries.

Mr. Kenny represents clients in disputes and investigations involving the SEC, Medicare, Medicaid, CMS, FDIC, OTS, USPS, DEA, IRS, FBI, DOJ, OIG, CFTC, state attorneys general and various other state and federal enforcement authorities. He also represents clients in state and federal administrative proceedings including licensure matters, Administrative Procedure Act appeals, contract disputes, health care provider appeals, reimbursement matters, bid protests, procurement disputes and constitutional challenges to state and federal statutes and regulations.

Mr. Kenny earned his B.A., *cum laude*, from Marquette University in 1984 and his J.D. from Catholic University in 1989. He practiced in Washington, D.C. and Virginia from 1989 until 2003 and currently practices in Nebraska.

CONSTRUCTION LAW

Jeremy T. Fitzpatrick, a partner in the Omaha office, leads Kutak Rock's construction practice group. Mr. Fitzpatrick assists clients with a wide variety of construction issues from initial project planning to completion, including payment disputes, liens, changes, acceleration and impact claims, and claims for design or construction defects. In addition to helping resolve these disputes, he assists clients with preparing or revising construction contracts and allocating risk in construction projects. He received his bachelor's degree from the University of Nebraska in 1994 and his law degree, with distinction, from the University of Nebraska in 2000. Mr. Fitzpatrick is admitted to practice in Nebraska, the United States Supreme Court, the United States Courts of Appeals for the Fifth, Eighth and Ninth Circuits and the United States District of Colorado.

PUBLIC FINANCE/GOVERNMENTAL RELATIONS

Curtis L. Christensen is a partner in Kutak Rock's Omaha office. A member of the firm since 1978, Mr. Christensen has served as bond counsel and underwriter's counsel in hundreds of municipal financings. He has served as bond counsel to the City of Omaha since 1984 in approximately 120 bond issues aggregating more than \$2.6 billion in principal amount, including the City's \$198,000,000 General Obligation Bonds (City of Omaha Convention Center/Arena Project), Series A and B of 2000, and over \$98 million of bonds to finance TD Ameritrade Park. Mr. Christensen also serves as bond counsel to the Airport Authority of the City of Omaha, Millard Public Schools and the State of Nebraska (for its ongoing State Master Leasing Program financings). In addition, in recent years he has served as bond counsel to the States of Hawaii and Minnesota and the Commonwealth of Kentucky. A Phi Beta Kappa graduate of Cornell University in 1972, Mr. Christensen's legal education was at the University of Michigan (J.D., *cum laude*, 1978). He is admitted to practice in Nebraska and Minnesota.

David K. Karnes, of counsel in Kutak Rock's Omaha office, is a former United States Senator who works out of Kutak Rock's Omaha and Washington, D.C. offices. He joined the firm in 1989 immediately following his tenure as a United States Senator representing Nebraska. While in the Senate, Senator Karnes served on the Banking Committee, including its Securities and Consumer Credit subcommittees, as well as the Agriculture and Small Business Committees.

Mr. Karnes's areas of principal activity with Kutak Rock include federal, state and international relations, corporate law, real estate and financial institutions. His governmental and business experience involves many areas of the firm's finance and structured transaction practices, as well as a broad range of clients and special issues. He has served in senior executive positions in federal executive, regulatory and legislative bodies and has broad expertise and familiarity with state and federal agency operations, including the White House, HUD and the Federal Home Loan Bank Board. At the state level, Senator Karnes served as the attorney in charge of the firm's engagement as special tax counsel to the Nebraska Legislature as it revised the state's personal property tax system. He is a former Chairman of the Board of

Directors of the \$40 billion Federal Home Loan Bank of Topeka, a principal secured credit source for saving and loans, savings banks, commercial banks, credit unions and insurance companies in Nebraska, Colorado, Oklahoma and Kansas. Mr. Karnes has served as a member of the United States Advisory Committee on Trade Policy and Negotiations. This committee is appointed by the President and is composed of chief executive officers of 40 of America's largest corporations as well as presidents of key agriculture and labor organizations. The Committee, established by Congress in 1974, is the principal trade advisory group representing America's private sector to the President and Congress on all trade issues such as the Uruguay Round of the GATT and the North American Free Trade Agreement. In 1981, Senator Karnes was selected and served as a White House Fellow. He is actively involved in numerous civic, educational and charitable organizations in Nebraska and nationally. He earned a bachelor's degree, with distinction, from the University of Nebraska in 1971 and a law degree from the University of Nebraska College of Law in 1974.

Patricia Schuett Peterson, a partner in Kutak Rock's Omaha office, concentrates her practice in tax-exempt housing finance. Ms. Peterson joined the firm after completing her legal education at the University of Nebraska (J.D., with distinction, 1979). Since that time she has participated as bond counsel for numerous single-family and multifamily housing financings for issuers across the nation. Ms. Peterson has primary responsibility as bond counsel for single-family housing and general counsel for all housing and other financings for the Nebraska Investment Finance Authority. She served as bond counsel to NIFA in the first financing to use a reciprocal structure of variable-rate short-term bonds sold through a select-auction process and an equal amount of inverse floating rate residual interest bonds—a financing designated a "Deal of the Year" for 1990 by *Institutional Investor*. She also serves as general counsel to NIFA. In addition, Ms. Peterson serves as bond counsel and underwriter's counsel for financings of the Oregon Department of Housing and Community Development and as special tax counsel to the Washington State Housing Finance Commission in connection with its single-family bond program.

Dawn M. Roth, a public finance associate in Kutak Rock's Omaha office, represents governmental bond issuers, underwriters, and nonprofit and private activity borrowers in public finance matters. Ms. Roth assisted with the firm's recent representation of the Nebraska Cooperative Republican Platte Enhancement Project and the Upper Republican Natural Resources District in several bond financings. She has also assisted with the firm's bond counsel representation in various housing, health care and utility bond financings. Ms. Roth received her B.A., *cum laude*, from Doane College in 2001. She received her law degree, Order of the Coif, from the University of Nebraska College of Law in 2009, where she was an executive editor of the *Nebraska Law Review*. She is admitted to practice in Nebraska.

Joel W. VanderVeen, a partner in the firm's Omaha office, concentrates his practice in public finance. He has recently served as counsel to the Upper Republican Natural Resources District and the Nebraska Cooperative Republican Platte Enhancement Project (the latter created pursuant to the Nebraska Interlocal Cooperation Act by the following member NRDs: Upper Republican Natural Resources District, Middle Republican Natural Resources District, Lower Republican Natural Resources District and Twin Platte Natural Resources District) in several River Flow Enhancement Revenue Bond issues. He has also served as bond counsel to the Nebraska Investment Finance Authority for Nebraska's clean water and drinking water state

revolving loan programs since their inception, at present involving at least 29 issues under a variety of finance structures. In addition, Mr. VanderVeen has served as issuer's counsel and disclosure counsel to the Kansas Development Finance Authority for its leveraged drinking water (reserve fund model) and clean water (cash flow model) state revolving fund programs and in structuring its combined/cross-collateralized program, and in connection with a transportation revolving fund. In addition, he has substantial experience with financing of governmental projects using state appropriation and other revenues, and financings for health care organizations and economic development and industrial development projects. A certified public accountant (inactive registrant) in Nebraska, he earned undergraduate and law degrees from the University of Nebraska (B.S., 1983; J.D., with distinction, 1987).

John J. Wagner is a senior partner in the Omaha office of Kutak Rock, co-chair of the firm's National Public Finance Department and head of the firm's national housing finance practice group. Mr. Wagner's relevant experience for an engagement as the District's counsel includes (1) current work advising boards of governmental entities on governance matters and conducting national training sessions concerning the duties and obligations of board members of governmental entities; (2) past work on the successful Niobrara River inverse condemnation (federal) lawsuit in the early 1970s (*Barnes v. United States*); and (3) while in law school, clerking for Professor Richard Harnsberger, Nebraska's preeminent water law expert, with respect to Nebraska riparian and groundwater laws (which included background research for the creation of basin-based water districts that ultimately resulted in the NRD Act).

The majority of Mr. Wagner's practice currently involves advising governmental entities on governance matters, serving as lead finance counsel to several state housing finance agencies and consulting with other firm attorneys to provide such services to numerous other finance agencies. He completed his education at the University of Nebraska (B.A., 1971, and J.D., with distinction, 1973). He is licensed to practice law in Nebraska, North Dakota and Minnesota.

EMPLOYMENT LAW

Marcia A. Washkuhn, a litigation partner and head of the Omaha office's employment law team, has extensive experience handling a variety of employment matters across the United States. She has defended actions filed under Title VII, the FMLA, the ADA, the ADEA and the LMRA, as well as various state laws. Her practice also focuses on protecting employers from corporate raiding, misappropriation of trade secrets and employee breaches of fiduciary duties and noncompete agreements. She has successfully defended clients in state and federal courts in Nebraska, Iowa, Idaho, North Dakota, South Dakota, Arizona, Illinois, Minnesota, Kansas and Missouri. Ms. Washkuhn has also defended corporate clients in ERISA and employee benefits litigation. In addition to her litigation experience, Ms. Washkuhn regularly provides day-to-day advice to employers on a wide array of employment issues, including interviewing, drug testing, background checks, the application of the ADA and the FMLA, employee performance issues and the discipline and termination of employees. She also has experience reviewing and advising employers on issues related to employment agreements, employment policies and employee handbooks, as well as reductions in force and reorganizations. Additionally, she has extensive experience handling and responding to complaints filed with the EEOC or state regulating agencies, and she has presented seminars and training for employers on various employment issues, including sexual harassment.

Ms. Washkuhn earned her B.A., with distinction, from the University of Nebraska at Lincoln in 1993 and her J.D., with high distinction, from the University of Nebraska College of Law in 1996. She is a member of the Society for Human Resource Management, the Human Resource Association of the Midlands, the Nebraska Defense Counsel Association, the Defense Research Institute and the ABA's Employment Law section.

7. Governmental Entities Firm Represents

Kutak Rock represents the vast majority of its governmental clients in public finance matters, but the firm also represents governmental entities in general corporate matters and litigation as well. Following is a representative list of governmental clients that Kutak Rock currently represents or has represented in recent years as bond counsel, general counsel, issuer's counsel, special tax counsel, disclosure counsel or litigation counsel.

- State of Arizona (litigation counsel)
- State of Colorado (bond counsel)
- State of Georgia (disclosure counsel)
- State of Hawaii (bond counsel, legislative counsel)
- State of Minnesota (bond counsel)
- State of Nebraska (bond counsel)
- Alameda County (California) Joint Powers Authority (bond counsel)
- Alaska Housing Finance Corporation (special finance counsel)
- Arizona Medical Board (litigation counsel)
- Arizona Public Safety Personnel Retirement System (litigation counsel)
- City and County of Denver, Colorado (bond counsel)
- City of Boulder, Colorado (bond counsel)
- City of Chandler, Arizona (litigation counsel)
- City of Colorado Springs, Colorado (bond counsel)
- City of Kansas City, Missouri (bond counsel)
- City of Long Beach, California (bond counsel)
- City of Los Angeles, California (bond counsel)
- City of Madison, Wisconsin (bond counsel)
- City of Omaha, Nebraska (bond counsel)
- City of Phoenix, Arizona (litigation counsel)
- City of Tempe, Arizona (litigation counsel)
- Colorado Department of Transportation (bond counsel)
- Colorado Educational and Cultural Facilities Authority (bond counsel)
- Colorado Health Facilities Authority (bond counsel)
- Cook County, Illinois (approved bond counsel)
- County of Boulder, Colorado (bond counsel)
- County of Pinal, Arizona (litigation counsel)
- Department of Airports of the City of Los Angeles (bond counsel)
- Department of Water and Power of the City of Los Angeles (disclosure counsel)
- District of Columbia (bond counsel)
- Douglas County, Nebraska (bond counsel)
- Higher Education Loan Authority of the State of Missouri (bond counsel)
- Johnson County, Kansas (bond counsel)

- Kansas Development Finance Authority (issuer's counsel, disclosure counsel)
- Kentucky Housing Corporation (bond counsel)
- Maricopa County, Arizona (litigation counsel)
- Maryland Community Development Administration (bond counsel)
- Maryland Department of Transportation (bond counsel)
- Metropolitan Airports Commission (Minneapolis–St. Paul) (bond counsel, disclosure counsel)
- Nebraska Educational, Health, and Social Services Finance Authority (bond counsel)
- Nebraska Investment Finance Authority (bond counsel, general counsel, issuer's counsel)
- North Dakota Housing Finance Agency (bond counsel)
- Oklahoma Housing Finance Agency (special tax counsel)
- San Bernardino (California) Associated Governments (approved litigation counsel)
- University of Colorado Hospital Authority (bond counsel)
- Wisconsin Housing and Economic Development Authority (bond and special counsel)
- Wyoming Community Development Authority (bond counsel, general counsel)

8. Fee Proposal

For the prospective engagement with the District, Kutak Rock proposes a two-tiered compensation arrangement composed of a monthly retainer and hourly rates. Following is an explanation of how these components would function in a contractual relationship with the District.

Monthly Retainer. We propose the use of a separate retainer (the “General Advice Retainer”) for general advice and communications regarding the routine operations of the District. We have found this type of retainer helps align interests and encourages clients to identify issues earlier, when they can often be addressed more easily, more efficiently and in a less costly manner. If an issue requires more extensive work beyond the initial inquiry, we typically bill on an hourly basis, but only after consulting with the client and agreeing upon a budget. We propose a General Advice Retainer of \$12,000 per month.

The General Advice Retainer would be a fixed fee per month and would not change regardless of the volume of services requested that are covered by the General Advice Retainer. The client and the firm typically agree to meet following the first six months of the engagement, or earlier if requested by the client, to discuss any necessary adjustments to the retainer. Generally, subject to the District's approval, we propose that the General Advice Retainer cover such matters as routine contract preparation and review, provision of oral advice and communications and attendance at the regular Board of Directors meetings, Subcommittee meetings and other routine meetings as requested. We anticipate that the same Kutak Rock attorney would attend all of the District's meetings. We view this attendance as a necessary function of representing the District and this would be included within the “General Advice Retainer.” As such, the firm would not charge separately for attendance or costs related to attendance (such as mileage). For services not covered by the General Advice Retainer, such as

litigation or administrative hearings, transactional work or other non-routine work, the firm would bill the District at agreed-upon hourly rates pursuant to an approved budget. We would expect to be able to negotiate a General Advice Retainer with the District after getting a better idea of the scope and volume of work the District anticipates it will need.

Hourly Rates. For work outside of the General Advice Retainer, the firm proposes the use of the following blended rates: (1) for legal services performed by partners, an hourly rate of \$275, and (2) for legal services performed by associates, an hourly rate of \$195. As with the General Advice Retainer, the firm and the client would agree to meet after the first six months of the engagement, or earlier if requested by the client, to discuss any necessary adjustments to the hourly rates proposed here.

9. Other Information

Inasmuch as the District has expressed a need for legal services in areas beyond eminent domain and inverse condemnation, we thought it would be appropriate to provide the firm's qualifications in various other practice areas that we believe would become involved in an engagement with the District.

Real Estate and Land Use

Kutak Rock has approximately 60 lawyers actively engaged in the practice of commercial real estate lending, real estate acquisition and development and related aspects of commercial law. Attorneys practicing in these areas provide service for a full spectrum of commercial and real estate activities in all 50 states, the District of Columbia and Puerto Rico. The firm has a specialized group that works on federal real estate issues.

Clients served in the real estate, land use and development practice areas represent all segments of the real estate lending and development industry, including governmental agencies, banks, insurance companies, pension funds, credit enhancers, construction contractors, developers, financial institutions, investors, investment advisors, investment bankers, lenders, lessors and lessees, mortgage conduits, property managers, publicly owned real estate funds and real estate investment trusts (REITs).

Kutak Rock's team of real estate attorneys offers extensive experience in every aspect of diverse and complex real estate transactions. We represent national, regional and local clients in all areas of the industry, including owners, developers, lenders, servicers, sponsors and investors. Our offices are uniquely positioned throughout the country to provide a high level of expertise in all types of real estate and related transactions, including multifaceted, multistate transactions, at a lower cost structure than many of our competitors. In addition to our broad capabilities, we have distinctive practices in lender representation, REIT representation, tax credit transactions, affordable housing, military housing, senior living, medical campus developments and loan workouts and restructuring.

The Kutak Rock team works with federal, state and local governmental entities to lease and convey real estate. In these and other cases, Kutak Rock assists governmental entities, lenders, credit enhancers and other clients in understanding the applicable leasing, governmental property and conveyance and financing process. Kutak Rock attorneys concentrating in this area

have expertise in the complex sectors of real estate law, real estate-based financing and environmental issues that such transactions typically entail.

Kutak Rock has guided federal agencies through the difficult process of developing government property while balancing the competing needs of the federal agency, OMB, Congress, the developer and the local community.

Environmental Law

Kutak Rock has an active and varied practice in the area of environmental law, including the structuring of commercial real estate transactions and mortgage securitizations to avoid environmental liability. Our environmental attorneys have assisted clients in all aspects of environmental due diligence, such as the review of reports prepared by environmental consultants. We have developed provisions in transaction documents to ensure fair disclosure of all environmental conditions and potential liabilities to all interested parties in real estate financings. The firm has worked with real estate clients to develop strategic plans for compliance with government regulations and for reporting of environmental conditions. In addition, we have counseled numerous clients concerning the potential environmental risks in foreclosure and other security interest “workout” matters.

Kutak Rock represents municipalities and private sector interests in many regions of the United States, providing in-depth services that include environmental litigation, pre-litigation counseling and resolution; negotiations with oversight agencies in characterization and remediation regulatory actions under federal and state environmental laws; state and federal regulatory approvals, licenses and permits; transactional environmental due diligence; environmental risk allocation and mitigation; environmental impact analysis pursuant to the National Environmental Policy Act (“NEPA”) and state-equivalent “little NEPAs”; and litigation arising therefrom. Our environmental specialists are also well-versed in CERCLA and RCRA statutes and regulations. Kutak Rock also represents a number of municipal entities throughout the United States with respect to environmental compliance matters. Numerous of these arise from deed obligations imposed with the property transfer of former military installations, including aviation facilities. Our firm’s role has also included environmental insurance coverage negotiation, broker coordination and regulatory approval of transfer terms and conditions where indemnity agreements were either insufficient or unavailable. Kutak Rock lawyers are intimately involved, on behalf of clients, in understanding and negotiating land use notices and restrictions arising from pollution conditions and federal public benefit transfers, including negotiating release deeds associated with former and joint use military aviation property disposals sponsored by the Federal Aviation Administration. Kutak Rock lawyers have participated in NEPA litigation on behalf of and against the United States. Representation of these clients includes recommendations for cooperating agency status in the NEPA process and assistance in the performance of the obligations incurred thereby.

In addition, Kutak Rock lawyers have worked extensively with federal agencies on environmental and other issues related to federal privatization transactions; almost all of the transactions require Kutak Rock to assist the federal agency with CERCLA, RCRA, Endangered Species Act, National Historic Preservation Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, and other federal environmental laws and their state equivalent laws. Kutak Rock

has assisted the Navy to develop model transactional documents that address each of the individual environmental laws identified in the solicitation. Further, Kutak Rock attorneys have significant experience assisting clients to address each of the environmental and other issues from both a transactional and risk mitigation perspective. Finally, Kutak Rock attorneys regularly assist our clients to present the information in public forums, and we have extensive experience assisting clients to structure the public forums.

Litigation

More than 185 Kutak Rock attorneys concentrate their practice in litigation and litigation-related areas. The firm's computer-linked offices in 16 cities and the presence of experienced litigators in 14 of the firm's offices enable Kutak Rock to provide nationwide litigation representation to corporations, businesses and governmental agencies.

The firm specializes in complex civil litigation, primarily defending its clients' interests in federal and state courts and in arbitration and mediation proceedings throughout the United States. Litigation attorneys draw upon and contribute to Kutak Rock's national resources as the firm assembles teams to complete major litigation with the consistent objective of matching the right lawyer or team to the task in the most cost-effective manner.

Current and recently completed litigation engagements have involved major contract disputes, insurance coverage, business torts, securities, products liability, lender liability, directors' and officers' liability, professional liability, technology transfer and licensing, shareholder governance, construction, environmental liability, zoning, eminent domain, employment discrimination, white-collar crime, intellectual property, trade secrets, antitrust and other complex commercial and business litigation of almost every type. In addition to seeking successful resolution of disputes for their clients through pretrial motions, discovery and trial, Kutak Rock litigation attorneys recognize that nonjudicial resolutions of disputes which avoid the risk and cost of lengthy litigation often may provide the best solution for clients.

Kutak Rock is able to manage large volumes of documents consistent with its clients' particular litigation needs. The firm's past successes include management of over one million documents in various federal securities fraud suits and in a complex environmental arbitration proceeding. The firm uses a combination of full- and part-time clerical and paralegal staff to number, copy and index relevant client records and documents produced by parties in suits.

Kutak Rock's litigation practice is divided into a number of specialized groups distributed throughout the firm's network of offices. Each specialized group is directed by one or more senior litigation partners practicing primarily within that area.

Kutak Rock's litigators have recently been involved in the following representative matters:

- Successful defense of municipality against inverse condemnation claims aggregating \$40 million.
- Successful defense of \$110 million class action suit brought against major city and its retirement system.

- Successful representation of Fortune 500 plaintiff in bid protest and related lawsuit to recover damages following rejection of client's bid for \$50 million contract.
- Successful defense of international construction company in bid protest administrative action attempting to reverse award of \$600 million contract.
- Successful defense of Fortune 100 financial institution in suit alleging False Claims Act violations and seeking \$1 billion in damages and penalties.
- In suit for specific performance of natural gas pipeline purchase sale agreement, secured damages from buyer while allowing seller, firm's client, to retain pipeline assets that were subject of the purchase sale agreement.
- Represented landowner in making a successful adverse possession claim which was affirmed by the Nebraska Court of Appeals and Nebraska Supreme Court
- Representation of a landowner in a dispute with a local NRD (not the Papio-Missouri River Natural Resources District) regarding drilling helper wells and additional wells for irrigation of existing and newly developed crop land. The firm has submitted objection letters to a proposed integrated management plan for the Natural Resources District pursuant to Neb. Rev. Stat. Sec. 46-715 and prepared by the Nebraska Department of Natural Resources and the local Natural Resources District. The firm has also negotiated a temporary resolution to the well disputes, allowing the client to drill some of the wells sought and permitted on the subject property. The firm has represented the client through representation at NRD hearings and pursuant to submitting objection letters on behalf of the client.

Construction Law

Following are summaries of various aspects of Kutak Rock's construction law practice.

Construction Bidding. Kutak Rock has legal expertise in assisting with the preparation of invitation-to-bid forms and bid forms, counseling on bidding and licensing matters, including matters with respect to minority business enterprises, bid protests, interpreting statutory and contractual requirements, and assisting with administrative hearings and debarment proceedings.

Specifically, Kutak Rock attorneys have experience handling bid protests on behalf of clients. Our lawyers have represented clients in both prosecuting and defending bid protests, both at the federal and state levels. In our experience, competition issues and evaluation problems are substantially similar on the state and federal levels. For example, the firm participated in the successful representation of an international construction company in the defense of a \$600 million bid protest relating to a major highway construction project before the Maryland State Board of Contract Appeals. Kutak Rock has also represented construction companies in federal court relative to bid protests concerning a state's use of race- and gender-based preferences in awarding multimillion-dollar highway contracts.

Construction Contracts and Bonds. Kutak Rock has extensive experience working with governmental entities on all aspects of construction projects. Our lawyers have decades of

experience reviewing, negotiating and drafting construction contracts, design contracts, design/build contracts, construction management contracts, and other alternative project delivery methods and construction management contracts, preparing and analyzing surety bonds, and counseling on statutory and case law issues concerning construction documents, dispute resolution, payment, indemnity, claims, work scope, and design responsibility. While Kutak Rock's most significant experience has been on behalf of lenders, the firm has extensive experience representing owners and developers of commercial and institutional properties in virtually all facets of large-scale property ownership and development, as well as surety bonds and lien issues.

Kutak Rock attorneys are hired by governmental entities as well as some of the largest construction and engineering companies in the world to provide them with legal advice on all types of construction contracts (i.e., design-build contracts, guaranteed maximum price contracts, prime contracts, design professional agreements, AIA form contracts, construction management agreements, etc.). On behalf of project participants and owners (obligees), our attorneys routinely draft claims and handle project resolutions with sureties on heavy highway and infrastructure projects.

We are proud that national and regional construction trade associations frequently request that our attorneys speak at seminars, teach construction law classes and write articles on cutting-edge construction law issues.

Kutak Rock attorneys are well-versed in alternative dispute resolution practices and particularly in the field of pre-litigation claims resolution that is often practiced in the design professional field of law. Federal and state courts have appointed our attorneys to serve as mediators in various jurisdictions throughout the country.

Administration of Construction Contracts. Kutak Rock is sought out by governmental entities and the world's largest construction and design professional companies to provide legal counseling on various matters that arise during the administration of construction contracts and drafting forms, correspondence and other documents relating to administration and performance, including nonperformance of subcontractors, nonpayment, delay, interference, surety issues, labor issues and change order and change directive issues. Our attorneys are experts in providing practical legal advice regarding change order disputes, issues involving requests for information ("RFI") and responding to RFIs, payment issues, insurance problems, field conditions and permitting disputes. It has been our experience that successful legal advice during the administration of construction contracts substantially reduces subsequent litigation and delay costs.

Construction Claims, Liens, Stop Notices and Bonds. The firm regularly provides legal advice in specification, mechanics' liens, lien waivers, suspension of performance, contract drawing/contract document interpretation and issues, certification requirements generally associated with construction projects, job scheduling, warranties, insurance coverage and bonds. As part of a multidisciplinary practice that includes the related areas of commercial practice, litigation, government (public) contracts and suretyship, the firm's construction lawyers also draw upon their specific experience preparing, defending and analyzing the full spectrum of construction claims (including changes, delay, impact and acceleration, labor and inefficiency,

defective specifications, differing site conditions, suspension of work, termination for convenience, wrongful termination and termination settlement procedures and bond claims), as well as their experience handling such matters as bid protests, False Claims Act matters, Contract Disputes Act issues and federal grant and assistance programs. Kutak Rock attorneys have experience preparing and defending claims related to extra work, delay, interference, acceleration, lost productivity, defects and nonperformance, providing surety analyses, and counseling on procedures for enforcement and defense of liens, stop notices, bonds and claims.

As with other practice areas, the firm's approach to construction matters is to educate clients, maintain communications and respond to problems quickly before they escalate. The firm's attorneys provide counsel to clients in claim avoidance, drafting and contract preparation and other matters intended to minimize the clients' risks of litigation. In the event litigation is necessary, the firm's litigators bring a wealth of experience to their representation of clients in courts across our country as well as in arbitration, as provided under many standard construction agreements.

Construction Litigation, Mediation and Arbitration. The firm assists with construction-related litigation, mediation and arbitration involving various issues, including construction and design defects, delay, sequencing and efficiency bid challenges, earth movement, disruption and acceleration, time extension and additional work, termination challenges, stop notices, mechanic's lien and prevailing wage claims, job-site injuries, and payment and performance bonds.

Increased construction litigation is an inevitable result of today's litigious society. The resulting litigation increases the costs and undermines the profitability of construction projects. The goal of Kutak Rock's construction lawyers is to assist the client early in the construction or design process to avoid claims and achieve timely completion of projects without the time and expense of litigation.

Kutak Rock lawyers always seek opportunities for alternative dispute resolution of claims when possible. However, while dispute avoidance is an integral goal of the practice group, we stand ready to vigorously litigate our clients' position, both at trial and appeal, when litigation is unavoidable.

Our attorneys have extensive experience in all aspects of construction litigation, including representing contractors, subcontractors, public and private owners, developers, suppliers, construction managers, design professionals, sureties and insurers, lenders, equipment manufacturers and others involved in all phases of the construction process.

Kutak Rock's attorneys have experience preparing, defending and analyzing the full spectrum of construction claims when necessary, including claims involving changes, delay, impact and acceleration, productivity, defective specifications, differing site conditions, suspension of work, termination for convenience, and wrongful termination and termination settlement procedures. Our attorneys also regularly provide specific and relevant advice to the firm's construction industry clients in a variety of areas, including counsel on contract drawing/contract document interpretation and issues, certification requirements, bond actions, job scheduling and drafting and negotiating contracts.

As mentioned above, Kutak Rock attorneys are well-versed in alternative dispute resolution practices and particularly in the field of risk assessment and avoidance and pre-litigation claims resolution that is often practiced in the design professional field of law. Federal and state courts have appointed our attorneys to serve as mediators in various jurisdictions throughout the country.

Public Finance

Kutak Rock is one of the most highly respected law firms in the country in the area of financing transactions undertaken by state and local governmental entities. The firm represents state and local governmental bodies, investment bankers, and credit and liquidity providers in a diverse public finance practice which encompasses virtually every form of debt financing. According to industry rankings based on the dollar volume of completed transactions, for almost 30 years the firm has annually placed among the most active firms in the nation in this area of law. More than 100 firm lawyers concentrate all or a major portion of their practice in public finance matters and related areas. Areas of public finance in which Kutak Rock claims special expertise include housing, student loans, airports and health care. The firm also represents investment bankers, commercial banks, insurance companies and other financial parties in a broad range of primary-market and secondary-market municipal derivative transactions.

For the five most recent calendar years, Kutak Rock has consistently been ranked in the top 10 bond counsel firms in the nation, based on dollar volume, as follows:

Calendar Year	Law Firm Rank	Number of Bond Issues	Bond Dollar Volume
2013	3	283	\$13.3 billion
2012	4	334	\$14.2 billion
2011	3	220	\$12.9 billion
2010	4	375	\$15.1 billion
2009	7	255	\$8.8 billion

Kutak Rock has specific financing experience with NRDs and comparable entities. The firm served as counsel to the Nebraska Cooperative Republican Platte Enhancement Project (created pursuant to the Nebraska Interlocal Cooperation Act by the following member NRDs: Upper Republican Natural Resources District, Middle Republican Natural Resources District, Lower Republican Natural Resources District and Twin Platte Natural Resources District) for the issuance of:

- \$75,000,000 Nebraska Cooperative Republican Platte Enhancement Project River Flow Enhancement Revenue Bond (Temporary Financing), Series 2012; closing date 12/4/12
- \$75,575,000 Nebraska Cooperative Republican Platte Enhancement Project River Flow Enhancement Revenue Bonds, Series 2013A; closing date 9/10/13

- \$16,985,000 Nebraska Cooperative Republican Platte Enhancement Project River Flow Enhancement Revenue Bonds, Series 2013B (Federally Taxable Interest); closing date 9/10/13
- \$15,700,000 Nebraska Cooperative Republican Platte Enhancement Project Taxable River Flow Enhancement Revenue Bonds, Series 2013C; closing date 12/24/13

The firm also served as counsel to the Upper Republican Natural Resources District for:

- \$16,655,000 Upper Republican Natural Resources District, Limited Obligation Occupation Tax Supported River Flow Enhancement Bond, Series 2013D; closing date 12/20/13

As general counsel and bond counsel to the Nebraska Investment Finance Authority, Kutak Rock has handled hundreds of bond issues involving over \$6 billion of bonds. The firm also represents many Nebraska governmental entities as bond counsel, including the City of Omaha, Douglas County, OPPD, Lincoln Electric System and the Omaha Airport Authority.

Employment Law

Kutak Rock's Labor and Employment Law Group has extensive experience representing employers in a wide range of employment issues on both day-to-day advisory matters and in state and federal administrative and judicial proceedings (trial and appellate levels). Firm attorneys offer a variety of services and experience, including counseling to avoid or minimize risk of liability, creating affirmative action plans or programs, establishing alternative dispute resolution programs, drafting personnel policies and handbooks, drafting executive employment and compensation agreements, counseling on terminations, discipline and promotions, structuring individual or group severance packages, conducting wage and hour audits, counseling for health and safety compliance, and developing strategies for clients planning workforce changes. In addition, firm attorneys have expertise in pre-claim counseling and in investigation and defense of discrimination claims, fair employment practices, disability act and housing claims, litigation over employer-employee business relations, plant closing laws and general employment matters.

Kutak Rock's employment lawyers have substantial experience in all aspects of employment law in Nebraska and across the country. Such experience includes representing employers in administrative proceedings and litigation, including class or collective actions. The firm regularly advises clients on, and defends claims brought under, federal, state and local civil rights and wage and hour and other employment laws, including, but not limited to, Title VII, the Age Discrimination in Employment Act (the "ADEA"), the Pregnancy Discrimination Act, the Fair Labor Standards Act (the "FLSA"), 42 U.S.C. § 1981, 42 U.S.C. § 1983, the Americans with Disabilities Act (the "ADA"), the ADA Amendments Act (the "ADAA"), the Lilly Ledbetter Fair Pay Act, the Genetic Information Nondiscrimination Act ("GINA"), the Equal Pay Act and the Family and Medical Leave Act (the "FMLA"). In state courts and federal diversity matters, the firm also represents clients in numerous state tort and contract law claims arising in the employment context, including, for example, claims for wrongful discharge, breach of contract, breach of fiduciary duty, unjust enrichment and promissory estoppel.

Kutak Rock also has significant experience with employment claims related to corporate raiding and unfair competition. In addition, the firm's employment litigators have experience enforcing arbitration provisions contained in employment agreements and arbitrating the employment claims that arise under those agreements. Further, Kutak Rock's employment litigators have experience representing employers in actions filed under various state wage payment and collection acts. They have also defended class action claims asserted under federal and state civil rights and employment discrimination laws.

The firm's employment lawyers also understand that potential employment claims can often be recognized and addressed before developing into costly and protracted litigation. Kutak Rock's employment attorneys work together to proactively minimize their clients' exposure to such claims by regularly advising employers on issues related to employee interviewing, hiring, discipline and terminations. The firm also provides advice on the proper application and implementation of local, state and federal laws, including state wage payment and collection acts and such federal laws as the FMLA, the ADA, the ADAA, GINA, the Lilly Ledbetter Fair Pay Act, the ADEA and the FLSA. Kutak Rock helps employers minimize employment-related risks by offering employee, management, human resources and sexual harassment training to its clients and by drafting and implementing personnel policy and procedures and employee handbooks. Kutak Rock attorneys also advise employers on issues related to occupational safety, drug testing, employee privacy, reductions in force, employee use of company technology and ownership of employee inventions.