



Des Moines Area Metropolitan Planning Organization

Proposal for Compensation Consulting Services

March 6, 2019



Newport Group

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March 6, 2019

R. Todd Ashby, AICP
Executive Director
Des Moines Area MPO
420 Watson Powell, Jr. Way Suite 200
Des Moines, Iowa 50309

Dear Todd:

Thank you for reaching out to me/Newport Group, and I enjoyed our discussion last week. It was very helpful in finalizing our scope of services and approach in completing your compensation initiative. We are enthusiastic about the prospect to serve you and the Des Moines Area MPO ("DMAMPO").

This engagement letter outlines our understanding of their needs and the approach we generally follow for projects of this nature. You will find:

- When we work with you, we bring decades of consulting experience through the involvement of a Principal;
- We are committed to understanding your organizational needs, challenges and priorities;
- We possess the qualifications, relevant experience and the dedicated consulting team to deliver services that meet your expectations;
- We are focused on providing top quality services and analysis that remain affordable and stay within budget;

On behalf of Newport Group, we pledge that the Des Moines Area MPO will receive analysis, recommendations and insights from a consulting team that is committed to your total satisfaction. As you review, please contact me if you have any questions.

Sincerely,

Newport Group

A handwritten signature in black ink that reads "Kevin Paulsen". The signature is written in a cursive, flowing style.

Kevin Paulsen, Principal

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1. Our Understanding of Your Needs

The Des Moines Area MPO is a regional transportation planning entity comprised of local communities and transportation agencies in the Des Moines, Iowa, metropolitan region. Its planning area encompasses over 500 square miles and provides a forum to ensure coordination between the public and local, state, and federal agencies in regards to planning issues and to prepare transportation plans and programs.

With approximately nine full-time staff, DMAMPO would like to maintain a formal compensation approach, appropriate pay levels along with market competitive ranges. This will allow the organization to pay competitive amounts in order to attract, motivate and retain top talent. DMAMPO has also requested a proposal to analyze the benefit offerings for the organization. This study will assist DMAMPO leaders in determining appropriate levels of compensation and benefits while implementing a competitive compensation philosophy for the organization. The remainder of this proposal outlines the objectives, approach, timing and fees for this important project.

2. Objectives

The primary objectives of this project are to:

- Provide the analysis and report outlining project scope, methodology and findings.
- Analyze and compile compensation market data that relates to the industry sector, organization size, market area, and roles for an estimated 7 staff positions along with the Executive Director role.
- Provide a report and analysis of DMAMPO's compensation levels with guidance on market adjustments for individuals.
- Provide recommendations for market-based compensation ranges.
- Develop documentation to support the salary administration process and ongoing decision-making related to performance reviews,
- Conduct a benefits review to ensure that DMAMPO's benefit offerings remain competitive in the marketplace

3. Services and Scope of Work

Our approach to compensation advisory services

Based on our understanding of your needs and objectives, and our experience with similar engagements, we have defined an approach that encompasses the following steps:

- Project planning
- Verification or identification of total rewards philosophy
- Job analysis and external market pricing
- Range recommendations
- Benefits comparative analysis

Step 1. Project Planning and Initiation

We will begin the engagement with a planning discussion to accomplish the following:

- Confirm project scope and approach
- Clarify the roles and responsibilities of your staff and ours for this engagement
- Define target dates for completion of major work steps
- Clarify documentation required to proceed

In order to effectively partner with you on this important engagement, we will need to understand DMAMPO's existing compensation system and programs. This is typically accomplished through a review of current materials (to the degree they exist) such as:

- Mission, vision and values statements
- Organization charts
- Information related to existing benefit offerings along with compensation amounts and programs (such as administrative guidelines, current compensation levels, incentive or bonus plans)

Step 2. Job Analysis and External Market Pricing

We believe it is important to talk with you and/or senior leadership to verify certain parameters of the organization's total rewards philosophy before gathering competitive market data. This will help ensure we are using appropriate salary surveys, scope data and statistics. Philosophical questions to discuss would include:

- Definition of competitive market in terms of industry, size and demographics
- Desire to be an aggressive, moderate or conservative payer of compensation in relation to market levels
- The extent to which the above posture should differ by type of job, if at all
- The relationship between pay and performance

Before comparisons can be made to the market, it is also important to have a good understanding of the responsibilities performed by employees; this can be done by reviewing job descriptions. After reviewing the descriptions, we will identify those that require further clarification or follow up.

All Roles:

We will then gather external wage data (base salary and total cash compensation) based on DMAMPO's definition of "market" as identified. Based on the analysis of job responsibilities, we will collect competitive market data for benchmark positions. We will utilize 3-5 of the most applicable survey sources from our large compensation survey library (e.g. PRM Not-for-Profit, ERI, ASAE, Towers Watson, Mercer, Compdata Benchmark and Not-for-Profit). The number of benchmark positions to be market priced is estimated to be seven staff roles and one executive role. Our analysis entails:

- Using appropriate industry cuts of data, when appropriate and available
- Gathering data at the 25th, 50th and 75th percentiles for both salary and total cash compensation
- Geographically assessing data for particular location(s)
- Aging survey data to a requested date

Executive Director role only:

Additionally, we will then gather external wage data (base salary and total cash compensation)

- We will use a previously identified peer group of organizations (if applicable) but can also develop the mix of organizations to be included in the peer group. Analysis will include compensation data from public filings for the agreed upon group of peers.

We will document all salary survey sources referenced, the specific match(es) made to the marketplace, and all pertinent statistics such as sample size, scope categories, etc., so that the process can be readily explained and easily replicated in the future.

Step 3. Incumbent Pay Analysis

The analysis gathered in Step 2 will provide the foundation for the Incumbent Pay Analysis. We will provide a template and actual incumbent base pay will be compared to show important ratios, amounts and positioning within the recommended market ranges. Our analysis will show:

- Where does each employee fall within the recommended range for their role?
- What will be the cost to bring employees to minimum and midpoint?
- Which employees (if any) are over the range maximum?

- Which employees (if any) should be considered for base compensation increases?

The analysis will provide guidance and clear direction as to which positions may need immediate attention to keep compensation competitive and within the parameters of the compensation structure. We will provide a spreadsheet template that can be used to determine the cost impact of implementing the new compensation analysis and recommendations.

Step 4. Benefits Comparative Analysis

For the benefits analysis and recommendations, we would use published benefit survey data (e.g. AMPO, ASAE, Newport, CompData) to compare DMAMPO benefits with the external market. The analysis of survey data will not put a value on each particular benefit but will compare the types and amounts of benefits offered by other organizations with yours. It will provide insight into the total rewards received by your employees.

Our process entails:

- Understanding your current benefit programs. For each benefit offering, we will review the benefit communication material your organization provides to employees. This may include Summary Plan documents, your employee handbook and any other benefits related materials focusing on eligibility, coverage, cost sharing and exclusions. We will work with you to get clarification, as necessary.
- Utilizing 3-5 of the most applicable published survey sources from our benefits survey library. Data tables will summarize key data, amounts and direct comparisons to the benefit offerings in your organization.

Step 5. Final Report and Presentation

We will prepare and present a final report that summarizes the scope of the project along with our findings and recommendations, including:

- Overall report for the selected roles with associated analysis and recommendations
- Findings and recommendations of the market analysis for all jobs
- Recommendations for suggested compensation ranges for each role
- Analysis and recommendations for compensation grade assignments
- Data regarding national and regional trends in base pay and salary structure adjustments

We will conduct an in-person meeting with the Executive Committee to review our initial report. Needed revisions or updates will be considered and we will submit a final project report. Any additional presentations or analyses will be outside the scope of this project and will be billed on a time and materials basis.

4. Client Acceptance of Work

At the conclusion of each phase of work, we will review with you the intended scope of work and deliverables set out in this document to confirm we have met the defined project expectations. If you believe the deliverables do not conform, you will notify us in writing within 30 business days of receiving the deliverables that they do not conform. We will then have a reasonable period of time, based upon its severity and complexity, to correct the nonconformity. If you use the deliverables before acceptance, or if you fail to notify us of the nonconformance within the 30-day period, the deliverables will be considered accepted.

Our personnel shall observe your confidentiality, code of conduct or other reasonable policies regarding working conditions and business hours to the extent our personnel are made aware of such policies. Newport Group will furnish replacement personnel in the unlikely event that assigned personnel refuse to observe said policies. If for any reason, any of our personnel are unable to complete the service period or their performance does not meet your expectations, Newport Group will attempt to provide suitable replacements.

5. Staffing

The most critical element in the successful completion of any engagement of this nature is the personnel assigned to the project. **Kevin Paulsen, Principal**, will be responsible for all services provided to DMAMPO throughout this engagement. **Heidi Leedle, Associate Consultant** will assist throughout the duration of the project. Other professionals at the necessary skill and experience level may be called upon to assist in the project as appropriate. While we will attempt to comply with your requests for certain individuals, we retain the right to assign our personnel, as appropriate, to perform the service. Professional biographies are provided in Appendix A to this proposal.

During the term of this engagement and for a period of one year following its expiration or termination, neither party will actively solicit, employ or otherwise engage any of the other party's employees (including former employees) who were involved in the engagement. In the event either party breaches this provision, the breaching party agrees to pay to the aggrieved party within 30 days after demand an amount equal to the greater of \$50,000 or 100 percent of the annual base salary of any such employee. For the avoidance of doubt, the foregoing does not prohibit either party from employing individuals who were not involved in the engagement or who apply for positions in response to internal postings, employment advertisements or other general solicitations of employment, whether such applications are during the term of this engagement or thereafter.

6. Engagement Assumptions and Client Responsibilities

Our services, fees and work schedule are based upon the assumptions, representations and information supplied by you.

The Des Moines Area MPO will determine the extent of services it wishes Newport Group to provide and ensure our company has access to key people and data. If circumstances arise relating to the availability of sufficient, competent evidence or information which, in our professional judgment, prevents us from completing the engagement, we retain the unilateral right to take any course of action permitted to us, including withdrawal from the engagement.

In the event we are requested or authorized by the Des Moines Area MPO or are required by government regulation, subpoena or other legal process to produce our documents or our personnel as witnesses with respect to our engagements for the Des Moines Area MPO, DMAMPO will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, including the fees and expenses of our counsel, incurred in responding to such requests.

You agree to furnish personnel, facilities and resources, and undertake the responsibilities set forth in this proposal. You also agree to cause all levels of your employees and contractors to cooperate fully and timely with us. You will designate an employee or employees within your senior management who will make or obtain all management decisions with respect to this engagement on a timely basis. You also agree that all assumptions set forth in this proposal are accurate and agree to provide us with such further information we may need and which we can rely on to be accurate and complete. We will be entitled to rely on all of your decisions and approvals made independently, and we will not be obligated to

evaluate, advise on, confirm, or reject such decision and approvals. You will evaluate the adequacy and results of services and will let us know immediately of any problems or issues you perceive in our personnel, services or deliverables. We will also let you know where we feel we are not getting the appropriate cooperation or direction and advise you of any other issues related to this engagement.

The success of this engagement is dependent upon full openness, communication, cooperation and timely direction. The fulfillment of these responsibilities is critical to the success of this engagement. The successful delivery of our services, and the fees charged, are also dependent on your timely and effective completion of your responsibilities, the accuracy and completeness of the assumptions, and timely decisions and approvals by your management. You will be responsible for any delays, additional costs, or other liabilities caused by or associated with any deficiencies in the assumptions or in carrying out your responsibilities.

In the event we obtain any nonpublic personally identifiable information regarding any of your customers during this engagement, we will use such information, if at all, only for the purposes described in this letter and will keep such information confidential in accordance with the provisions of Section 1 of the attached Newport Group General Business Terms. We have implemented commercially reasonable safeguards to protect against the loss, misuse, alteration or destruction of or unauthorized access to such information (which safeguards include policies for the disposal/destruction of such information), and will promptly notify you after learning of any security breach that compromises such information.

You also will let us know immediately of any problems or issues you perceive in our personnel or services. We will also let you know where we feel we are not receiving the appropriate cooperation or direction and advise you of any other issues related to this engagement. The success of our engagement is dependent upon full openness, communication, cooperation and timely direction. The fulfillment of these responsibilities is critical to the success of our engagement.

7. Timing and Fees

Timing

Once we receive your signed acceptance of this proposal and have your signed authorization, we can begin the work described in the proposal on a mutually agreeable start date. We estimate completion of the project will take approximately 7-8 weeks.

Fees

Steps	Description	Estimated Fees	Notes
1	Project planning and initiation	\$500	(1)
2	Job analysis, external market pricing	\$3,275 - \$3,475	(2)
3	Incumbent pay analysis	\$700 - \$900	
4	Benefits comparative analysis	\$1,900 - \$2,300	
5	Final report and presentation	\$1,600 - \$1,900	(3)
	Total- All Phases	\$7,975 - \$9,075	

(1) required for project

(2) assumes 7 non-executive positions at \$325/position and 1 executive positions at \$900-\$1200

(3) on-site visit

In addition to our professional fees, we will bill for unplanned meeting time and our direct expenses related to travel, and any other out-of-pocket expenses (such as delivery services). If we find that additional costs will be incurred, we will immediately inform you and request your approval before proceeding. We will bill DMAMPO monthly for services rendered and payment is due upon receipt of the invoice.

Travel time will be billed at 50 percent of our standard hourly rates. Planned on-site meetings are noted in the assumptions above and travel time is included in the estimated fees for those steps.

You acknowledge that this is our good faith estimate based upon our understanding of the engagement assumptions and the facts and circumstances we are aware of at this time. If the basis of our estimates is inaccurate, the fees and expenses may be different from those we each anticipate.

Fees for services of this type are always difficult to estimate. If circumstances are encountered that affect our ability to proceed according to the plan outlined above, such as major scope changes, loss of key DMAMPO personnel, unavailable information, or undetermined or requested scope changes during our scoping efforts, we will inform you promptly and seek your approval for any changes in scope, timing or fees that may result from such circumstances.

We will bill our fees and expenses monthly. Those fees and expenses do not include taxes. You will be responsible for and pay all applicable sales, use, excise, value added and other taxes associated with the provision or receipt of the services and deliverables, excluding taxes on our income generally. Our invoices are payable upon presentation and amounts remaining overdue for more than thirty (30) days will be subject to an interest charge of 1.5% per month from the date of invoice. If you object to any portion of an invoice, you will notify us of your objection within ten (10) days of the date of the invoice, and the parties will promptly make a good faith effort to settle the disputed portion of the invoice. No interest will accrue on such disputed portion of the invoice until the dispute is resolved. You will in any event pay the portion of the invoice that is not in dispute within such thirty (30) day period. We reserve the right to suspend or terminate services if our invoices are not timely paid, in which event we will not be liable for any resulting loss, damage or expense connected with such suspension or termination.

8. Information on Newport Group and Our Experience

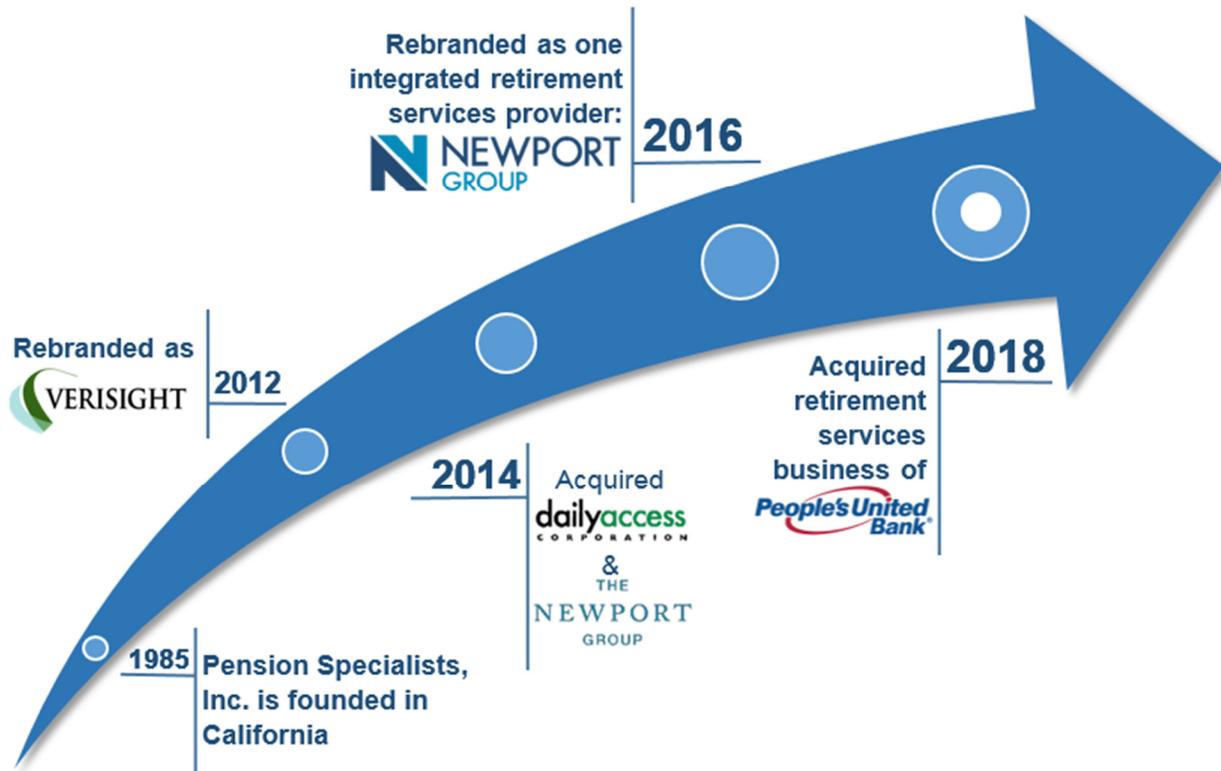
Company Overview

Newport Group employs more than 1,300 professionals offering retirement plan and consulting services from more than 25 regional offices across the country. Supporting clients is what we do best, and it is our number one focus for more than 30 years.

While our company has grown, our goal remains the same: providing superior service to our clients and their participants.

- **INDEPENDENT.** We deliver services with an objective, unbiased approach.
- **EXPERIENCED.** Our exceptional team of knowledgeable and dedicated retirement, benefit and compensation specialists provide high quality support.
- **RESPONSIVE:** We are dedicated to the highest level of flexible and customized service in order to best meet your unique needs.

30+ Years of Steady Growth



9. Compensation and HR Advisory Services

To ensure the effectiveness of total compensation in your company, these resources must be delivered in a way that reinforces the organization's business strategy, culture, and values. Managing costs while promoting employee retention and satisfaction is the key to a successful program. Our consultants assist clients in building their organizational capabilities through effective benefit services and total compensation solutions.

Workforce Compensation

A well-designed and administered compensation program for your workforce provides benefits that directly impact the bottom line. Leverage Newport Group's experience to design a customized compensation program to meet your needs. We can help create alignment between strategic objectives, individual contributions, and rewards. This helps to control salary expenses and create balance between internal equity and market competitiveness, as well as minimizing turnover.

Executive Compensation

A sound compensation program is essential to maintain the high-quality management team you need for your future success. We work closely with your board, compensation committee, or executive team to establish a compensation strategy that links to your corporate goals and culture. We can help you design effective performance-based programs that encompass base salary, annual incentives, long-term incentives, as well as deferred compensation, supplemental executive retirement plans, executive perquisites and board of director pay.

Sales Compensation

The Sales force is the engine driving your organization's growth. A well designed and properly deployed sales incentive plan actively motivates the sales force to achieve established objectives, leading to tangible financial and strategy results. We can work closely with your team to design sales incentive plans aligned with your strategy and sales roles. Our goal is to maximize the impact of your incentive dollars by designing a plan that is right for your organization.

Surveys and Benchmarking

When your company utilizes well-constructed survey information during your strategic decision-making processes, your ability to improve productivity, performance and overall return on investment will be enhanced. We help clients address a number of issues using survey and benchmarking methodology. Projects include collecting competitive market information, providing operational and staffing benchmarks, making board compensation recommendations, and a host of other compensation and benefit related issues.

Project Acceptance

The Des Moines Area MPO has determined that Newport Group's proposal dated March 6, 2019 is acceptable and authorizes Newport Group to perform the services outlined in this proposal.

- Project planning and initiation
- Job analysis and external market pricing
- Incumbent pay analysis
- Benefits comparative analysis
- Final report and recommendations

The attached Newport Group General Business Terms apply to this engagement and are an integral part of our agreement. This proposal and Newport Group General Business Terms correctly set forth our understanding and acceptance of this agreement.

Please forward a copy of this signed acceptance to the attention of Kevin Paulsen via e-mail to Kevin.Paulsen@newportgroup.com. A PDF will be considered the equivalent of an original of this project acceptance.

Acknowledged and Accepted:

Des Moines Area MPO
420 Watson Powell, Jr. Way, Suite 200
Des Moines, IA 50309

Attachments:

Appendix A: Biographies
Appendix B: Survey Library
Newport Group General Business Terms

By: _____

Title: _____

Date: _____

Business/Tax ID Number: _____

Appendix A: Biographies

Kevin Paulsen

Principal

Newport Group

Cedar Rapids, IA

319.393.4836

Kevin.Paulsen@newportgroup.com



Summary of Experience

Kevin is a Principal at Newport Group. His specialty areas include wage and incentive system design; high-performance workplace implementation; organizational planning; performance management design; human resources compliance; leadership assessment and development.

A consultant since 1987, Kevin has assisted hundreds of companies in the financial services, professional services, manufacturing, not-for-profit, healthcare and construction industries.

Notable Engagements

- Advised and guided in the transformation to a “performance-based” culture for a 2,000+ employee food processing business. Support included setting organizational and departmental performance metrics, business literacy training, pay for performance linkage and new approaches to communication and employee involvement. Resulted in numerous productivity improvement ideas, 6 percent additional earnings for employees and higher company profitability.
- Assisted large NFP organization by determining competitive market levels of compensation and recommended base and incentive plan adjustments. Provided a report and analysis of executive compensation levels to determine risk relative to excessive compensation and provided guidance on market adjustments.
- Advised in the CEO succession planning selection process for a mid-size banking organization. Working in support of the Board, the process included the evaluation of multiple internal candidates. The evaluation provided a plan for developing and mentoring the successor to allow for a smooth and successful transition.
- Conducted a human resources diagnostic for a banking organization to uncover opportunities to improve the performance of their human resource function and reduce risk. Roles were defined and recommendations were made to improve standardization of HR services for the business.
- Completed a compensation and benefits comparison study for a multi-plant processing organization. Analysis compared employee compensation and benefits package to comparable positions for other private employers. Recommendations were offered to the total rewards offerings to provide a competitive pay and benefits package.

Publications and Presentations

Kevin has authored several articles that appear in the following publications:

- American Compensation Association (ACA) News
- HR Magazine
- Compensation Solutions
- Management World

Kevin is a frequent speaker for trade associations and service clubs, including:

- Society of Certified Public Accountants
- Institute of Management Accountants
- Society for Human Resource Management

Education

- B.B.A. in Management Information Systems, University of Iowa
- Senior Professional in Human Resources (SPHR) certification
- SHRM Senior Certified Professional (SCP)
- Certified Executive Compensation Professional (CECP)

Heidi Leedle

Compensation Associate

Newport Group

Chicago, IL

Heidi.Leedle@newportgroup.com



Summary of Experience

Heidi is a Compensation Associate with Newport Group's Compensation Consulting group. She has 12+ years of Human Resources experience, 6 of which were in compensation roles in the Health Care industry. She came to Newport Group in 2018 after ending a temporary contract job as a Compensation Analyst at a large, national healthcare organization. Prior to that, she took a 9-year break from the workforce to raise her family. Heidi has experience in job evaluation, market pricing, salary range development and cost impact analysis and is an active member of MACA (Milwaukee Area Compensation Association).

Education

Heidi received her Bachelor's degree in Healthcare Administration from the University of Wisconsin-Milwaukee.

Appendix B: Survey Library

General Industry Surveys

Survey Author	Survey Title
CompData	Benchmark Pro Midwest
CompData	Benchmark Pro National
CompData	Benchmark Pro Northeast
CompData	Benchmark Pro South Central
CompData	Benchmark Pro Southeast
CompData	Benchmark Pro West
CompData	Insurance
CompData	Legal Service
Mercer	North Central Region Survey
Towers Watson	Logistics and Supply Chain Management Compensation Survey
Towers Watson	Marketing and Communications Compensation Survey
Towers Watson	Sales Compensation Survey
Towers Watson	Information Technology Compensation Survey
Towers Watson	Office and Business Support Compensation Survey
Towers Watson	Professional (Admin and Sales) Compensation Survey
Towers Watson	Professional (Tech and Operations) Compensation Survey
Towers Watson	Technical Support and Production Compensation Survey
Towers Watson	Call Center and Customer Service Compensation Survey
Towers Watson	Engineering, Design & Technical Specialty Compensation Survey
Towers Watson	Human Resources Compensation Survey Report
CompData	Engineering & High Tech Survey
CompData	Utilities Compensation Survey

Executive and Management Surveys

Survey Author	Survey Title
Towers Watson	Supervisory and Middle Management Compensation Survey
Towers Watson	Top Management Compensation Survey
Mercer	Executive Compensation Survey
CompData	Executive Compensation & Benefits USA
The Employer's Association	National Executive Compensation Survey

Non-Profit Surveys

Survey Author	Survey Title
Alliance for Children & Families	Human Services Compensation Survey
American Society of Association Executives (ASAE)	Association Compensation & Benefits Study
Association Forum of Chicagoland	Association Compensation and Benefits Study
Association of Organ Procurement Organizations	Compensation and Administrative Practices Survey
PRM Consulting Group	Management Compensation Survey for Not-for-Profit Organizations
The NonProfit Times	NonProfit Organizations Salary and Benefits Survey
MRA	Southwest Wisconsin Nonprofit Agencies Compensation Survey
CUPA-Human Resources	Administrators in Higher Education Salary Survey
GuideStar	990 Advanced Database Access
CompData	Not-for-Profit Compensation Survey

Assessment Software

Survey Author	Survey Title
Economic Research Institute (ERI)	Geographic Assessment Tool
Economic Research Institute (ERI)	Salary Assessor
Towers Watson	Geographic Assessment Tool

Newport Group General Business Terms

These General Business Terms (the “Terms”) will govern the services provided by Newport Group (“Newport Group”) as set forth in the Engagement Letter or Proposal dated March 6, 2019 (the “Engagement Letter or Proposal”), executed by the Des Moines Area MPO (“Client”) and Newport Group to which these Terms are attached. These Terms, together with the Engagement Letter or Proposal and any of its attachments, constitute the entire understanding and agreement between Client and Newport Group with respect to the services described in the Engagement Letter or Proposal (collectively, the “Agreement”), supersede all prior oral and written communications, and may be amended, modified or changed (including changes in scope or nature of the services or fees) only in writing when signed by both parties. If there is a conflict between these Terms and the terms of the Engagement Letter or Proposal, these Terms will govern.

1. Confidentiality With respect to any information supplied in connection with this Agreement and designated by either party as confidential, or which the recipient should reasonably believe is confidential based on its subject matter or the circumstances of its disclosure, the recipient agrees to protect the confidential information in a reasonable and appropriate manner, and use and reproduce the confidential information only as necessary to perform its obligations under this Agreement and for no other purpose. The obligations in this section will not apply to information which is: (i) publicly known; (ii) already known to the recipient; (iii) lawfully disclosed by a third party; (iv) independently developed; or (v) disclosed pursuant to legal requirement or order. Subject to the foregoing, the recipient may disclose the confidential information on a need-to-know basis to the recipient’s contractors, agents and affiliates who agree to maintain its confidential nature.

2. Deliverables (a) Upon full payment of all amounts due Newport Group in connection with this Agreement, all right, title and interest in the deliverables set out in the Engagement Letter or Proposal will become Client’s sole and exclusive property, except as set forth below. Newport Group will retain sole and exclusive ownership of all right, title and interest in its work papers, proprietary information, processes, methodologies, techniques, ideas, concepts, trade secrets, know how and software, including such information as existed prior to the delivery of the services and, to the extent such information is of general application, anything which Newport Group may discover, create or

develop during the provision of services for Client. Except for software owned by and/or proprietary to Newport Group, to the extent the deliverables contain Newport Group’s proprietary information, Newport Group grants Client a non-exclusive, non-assignable, royalty-free license to use it in connection with the deliverables and the subject of the Engagement Letter or Proposal and for no other or further use. To the extent the deliverables contain the proprietary information of a third party, Client agrees to comply with such third party’s terms of license as the same are communicated to Client. All licenses to software (including any enhancements to software) will be licenses to object code only.

(b) Client acknowledges and agrees that any advice, information or work product provided to Client by Newport Group in connection with this engagement is for the sole benefit and use of Client and may not be relied upon or used by any third party.

3. Warranty Newport Group warrants that the services will be performed with reasonable care in a diligent and competent manner. Newport Group’s sole obligation will be to correct any non-conformance with this warranty or, if Newport Group cannot correct the non-conformance, to refund to Client the amount paid to Newport Group for the portion of the services or deliverables that does not conform to this warranty; provided that Client gives Newport Group written notice within thirty (30) days after the services are performed or, if applicable, deliverables are delivered. The notice will specify and detail the non-conformance and Newport Group will have a reasonable amount of time, based on its severity and complexity, to correct the non-conformance. Newport Group does not warrant and is not responsible for any third party products or services. Client’s sole and exclusive rights and

remedies with respect to any third-party products or services are against the third-party vendor and not against Newport Group. THIS WARRANTY IS NEWPORT GROUP’S ONLY WARRANTY CONCERNING THE SERVICES AND ANY DELIVERABLE, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, ALL OF WHICH ARE HEREBY DISCLAIMED.

4. Indemnification (a) Each party agrees to indemnify, hold harmless and defend the other from and against any and all claims, actions,

Newport Group General Business Terms

fees, expenses, costs, damages, losses and liabilities (including reasonable attorneys' fees) (collectively, "Liabilities") for bodily injury or death of any person or damage to real or tangible personal property which the other party may sustain or incur, to the extent such Liabilities result from the negligence or willful misconduct of the indemnifying party, its employees, agents or representatives.

(b) Newport Group agrees to indemnify, hold harmless and defend Client from and against any and all Liabilities to the extent such Liabilities result from the infringement of any third party's intellectual property by any deliverables provided under this Agreement. The foregoing indemnification will not apply to the extent any infringement results from: (i) the use of the deliverables other than in accordance with the terms of this Agreement and any applicable documentation or instructions supplied by Newport Group; (ii) any modification to the deliverables not expressly agreed to in writing by Newport Group; or (iii) the combination of the deliverables with any materials not provided or expressly approved by Newport Group.

(c) Client agrees to indemnify, defend and hold harmless Newport Group from and against any and all Liabilities incurred or suffered by or asserted against Newport Group to the extent such Liabilities result from a third party's use, possession of or reliance upon Newport Group's advice, information or work product as a result of Client's failure to comply with the Letter requirements of Section 2(b) above.

5. Liability Except for each party's indemnification obligations under this Agreement, the total liability of Client and Newport Group (and their respective affiliates, officers, directors, employees, contractors, agents and representatives) relating to this Agreement will in no event exceed an amount equal to the fees paid (in the case of Newport Group's liability) or owing (in the case of Client's liability) to Newport Group under this Agreement. In no event will Client or Newport Group (or their respective affiliates, officers, directors, employees, contractors, agents or representatives) be liable for any special, consequential, incidental, punitive or exemplary damages or loss (nor any loss of profits, savings, data, use of software or hardware or business opportunity, or interruption of business) even if advised of the possibility of such loss.

6. Termination (a) Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' prior written notice to the other party.

(b) Client will pay Newport Group for all services rendered (including deliverables and products delivered), expenses incurred and commitments made by Newport Group through the effective date of termination.

7. General (a) Except for the payment of money, neither party will be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

(b) No term of this Agreement will be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent.

(c) Neither party may assign or transfer this Agreement without the other party's prior written consent except Newport Group may assign this Agreement to any of its affiliates or a successor in interest now or hereafter in existence.

(d) Any notices given pursuant to this Agreement will be in writing, delivered to the addresses set forth in the Engagement Letter or Proposal (unless changed by either party by notice to the other party), and will be effective upon receipt.

(e) If any term or provision of this Agreement is determined to be invalid or unenforceable, such term or provision will be deemed stricken, and all other terms and provisions will remain in full force and effect.

(f) Each party is an independent contractor and not an employee, agent, joint venturer or partner of the other.

(g) Newport Group may from time to time use subcontractors to deliver specific products or services to Client. The management of and all financial arrangements with subcontractors will be Newport Group's responsibility.

(h) The terms of this Agreement which by their nature are to survive this Agreement will survive its expiration or termination.

(i) The parties acknowledge that they may correspond or convey documentation DMAMPO various forms of electronic transmission (including, but not limited to, email, FTP, and cloud-based sharing and hosting applications) and that neither party has control over the performance, reliability, availability or security of these electronic transmission methods. Therefore, neither party will be liable for any loss, damage, expense, harm, disclosure or inconvenience resulting from the loss, delay, interception, corruption, disclosure or alteration of any electronic transmission due to any reason beyond its reasonable control.

(j) Neither party intends that there be any third party beneficiaries to this Agreement.

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(k) Neither party will use the other party's name, trademarks, service marks, logos, trade names and/or branding without such party's prior written consent. Notwithstanding the foregoing, Newport Group may mention Client's name and provide a general description of the engagement in Newport Group's client lists and marketing materials.

(l) The parties agree that this Agreement and any dispute or claim arising out of or relating to this Agreement or the services will be governed by and construed in accordance with the laws of the State of Delaware. The parties agree that all litigation or other legal proceedings under this Agreement will be brought in the State or Federal courts located therein. The parties agree to this choice of law, jurisdiction and venue, and waive the defense of an inconvenient forum. Additionally, the parties waive trial by jury and agree that any dispute or claim should be resolved by a judge without a jury.

(m) Any action against either party by the other in connection with this Agreement must be brought within eighteen (18) months after the cause of action arises.



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