

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 12/03/19 **Approx. Start Time:** 2:30 p.m. **Approx. Length:** 30 mins.
Presentation Title: Willamette Falls Locks Public Corporation Contribution Request
Department: Public and Government Affairs
Presenters: Sue Hildick, Trent Wilson
Other Invitees: Laura Zentner, BCS Director; Dan Johnson, DTD Director; Samara Phelps, Tourism Director

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

The Board is asked to consider an annual contribution lasting three years, with an option to extend two additional years if needed, to the Willamette Falls Locks Public Corporation, if established in an upcoming legislative session.

EXECUTIVE SUMMARY:

The Willamette Falls Locks State Commission was established in 2017 by Oregon Senate Bill 256, tasked with identifying a non-federal transferee to assume ownership of the Willamette Falls Locks, and to propose a potential governance and finance plan for which to make a transfer successful. In 2019, the Army Corps of Engineers finalized their disposition study affirming their desire to transfer the facility to a non-federal owner and commit limited funding to seismic repairs on the upper gates of the Locks to remove flood liability of the upper-Willamette River pool – roughly \$2.6 million.

The plan established by the Willamette Falls Locks State Commission includes the creation of a Public Corporation to take ownership of the Locks and request state funding - \$14.04 million - for capital repairs. The proposed business model is divided into two phases.

- Phase 1 includes a season of establishing the Public Corporation, negotiating transfer of the facility from the US Army Corps of Engineers, and managing the capital repairs of the Locks. Because no existing revenue mechanism presently exists for the Locks, and revenue is dependent on an operational Locks facility, the proposal to fund this phase is primarily through ongoing local stakeholder contributions. This is the nature of the present request before the BCC.
- Phase 2 begins after the transfer and construction of the Locks are complete, and the facility has returned to operating status. During this phase, the expectation is for the Locks to meet its revenue goals through a variety of usage fees, including commercial, tourism, and personal uses.

Clackamas County has been a leader of local stakeholder contributions since 2015. Clackamas County provided \$158,250 between FY 2015 and FY 2017, and an additional \$120,000 through FY 2018 and FY 2019. This totals \$278,250 of contribution, to date. Estimated staff time contribution since 2015 is roughly \$76,000.

The total local stakeholder contribution to date totals \$773,530 (not including staff time from Clackamas, Metro, and West Linn), and includes funding partners from Metro, a variety of river users and advocates, the tourism industry, and a collection of cities. Clackamas has contributed roughly 36% of total local stakeholder funding to date.

The anticipated expenses of Phase 1 of the Public Corporation total \$350,000 per year, with a time horizon of three to five years. All work to repair, transfer, and reopen the Locks can likely occur in a three year period, but years four and five are included for consideration to account for the volatility in the state and federal legislative process. Local stakeholders are being asked to consider annual funding contributions at their historical levels, and sunset when Phase 2 of the business model begins. Clackamas County's historical level would total \$60,000 per year.

FINANCIAL IMPLICATIONS (current year and ongoing):

The request would commit annual funding for three years, with an option to extend two additional years, to the Willamette Falls Locks Public Corporation, if formed, at \$40,000 per year (recommended). A three year commitment would total \$120,000 to the project. Funding would not begin until July 2020 (or Fiscal Year 2021).

Current year contributions (FY 2019) are staff only, managing the "project manager contract" for the Willamette Falls Locks State Commission. The total contract, supported by a variety of stakeholders totals \$865,000, of which Clackamas County contributed \$120,000 (13%) in FY 2018 to cover a two-year funding commitment. Clackamas County's contribution came from economic development lottery dollars.

STRATEGIC PLAN ALIGNMENT:

- This item aligns with the Public and Government Affairs Strategic Business Plan goals to provide intergovernmental connections and relationship building, strategic policy development and messaging, legislative, advocacy, and outreach services to county elected officials and departments so they can build key partnerships to achieve policy goals important to Clackamas County, with special emphasis on the strategic results in the BCC Strategic Plan.
- This item aligns with all five of the County's Performance Clackamas goals. However, it aligns best with the following three:
 - Grow a vibrant economy;
 - Build a strong infrastructure;
 - Honor, utilize, promote, and invest in our natural resources.

LEGAL/POLICY REQUIREMENTS:

N/A

PUBLIC/GOVERNMENTAL PARTICIPATION:

Public and Government Affairs (PGA) presently monitors the Willamette Falls Locks project through the State and Federal Legislative Agendas, as well as manages a "project manager contract" that supports the due diligence work of the Willamette Falls Locks State Commission.

OPTIONS:

- A) The Board participates as a funding partner in Phase I of the Willamette Falls Locks Public Corporation, contingent upon passage of state legislation to create said public corporation, at \$40,000 for 3 years, beginning in July 2020, and a commitment to consider funding additional years of Phase I if needed.
- B) The Board participates as a funding partner at a different amount for the Public Corporation, which may include alternative funding mechanism like in-kind contribution.
- C) The Board does not participate as a funding partner in the Public Corporation.

RECOMMENDATION:

Staff recommends the Board approves Option A) participates as a funding partner in Phase I of the Willamette Falls Locks Public Corporation, contingent upon passage of state legislation to create said public corporation, at \$40,000 for 3 years, beginning in July 2020, and a commitment to consider funding additional years of Phase I if needed.

ATTACHMENTS:

- Draft Business Plan for Proposed Willamette Falls Locks Public Corporation
- Draft Public Corporation Legislative Concept for 2020
- Local Funding Contributions To Date
- Local Economic Potential (Titled: Figure 1 Cross Scenario Comparison)
- 2014 BCC Resolution to Support the repair and reopening of the Willamette Falls Locks
- Draft Template Letter of Support as a funding partner for Phase I of a newly formed Public Corporation

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval s/Sue Hildick

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Sue Hildick @ 503-742-5900

Willamette Falls Locks Public Corporation Business Plan

DISCUSSION DRAFT – November 15, 2019

Updated to reflect feedback from the November 13, 2019 Meeting of the Willamette Falls Locks Commission

SUMMARY OF PC ACTIVITIES AND OPERATIONS DURING PHASES I (BEFORE & DURING REPAIR) & II (POST-REPAIR)

PHASE I: Years 2020 – 2024 (from end of Commission to opening of repaired locks)

Primary Activities: Launch the Public Corporation; negotiate and oversee transfer of the Locks; negotiate contracts and oversee capital improvements, administration and funding; negotiate operating agreements; marketing of the Locks to potential commercial/tourism users; and set the stage for the opening of the Locks.

PC Annual Expenses: \$350,000

PC Annual Revenues: \$350,000 (covered through shared allocations from multiple sources)

PHASE II: Years 2025 and Beyond (post-repair and ongoing)

Primary Activities: Continued oversight of programming, contracts and administration, Locks operation directly or indirectly, ongoing fundraising and marketing.

PC Expenses: \$610,500

PC Revenues: \$610,500 (covered through a mix of user fees, direct and indirect).

WFL Public Corporation Business Plan

PHASE I: 2020 – 2024 (I.E. FROM END OF COMMISSION TO OPENING OF REPAIRED LOCKS)

ASSUMPTIONS:

- Legislature (in 2020 Short Session) authorizes the formation of a Public Corporation to serve as the owner of the Locks, and have authority over its repair, upgrade and operations
- Legislature (also in 2020 Short Session) authorizes sufficient bond-backed funds to proceed with the repair of the Locks, including design, entitlements, and repair work
- Seed funding for this initial Phase I secured through IGAs with participating local and regional governments, as well as some mix of private funds and tourism grant funding and/or Marine Board grant funding

Expected Activities (also see detailed list of tasks for Phase I in Appendix A)

ADMINISTRATION

- Negotiate and oversee transfer of the Locks from the US Army Corps of Engineers to the PC
- Oversee the formation of the PC – incorporation, appointment of Board, adoption of bylaws, Board hires Executive Director or General Manager
- Establish and maintain the ongoing administration of the Locks
- Secure and oversee IGAs with entities providing funding during this Phase I; extend IGAs as necessary (i.e. some IGAs will be for a period of three years and may not fully cover the entire Phase I, which is projected to last four years)
- Oversee the negotiation of an IGA or contract with an operating entity in anticipation of an opening in 2024, unless the PC itself is the operator
- Secure capital funding – per terms of legislative allocation; potential Metro OS bond funds, potential tourism grants, Army Corps of Engineers funds, private/foundation support, etc.
- Secure Phase II permanent operational funding – negotiations with funders, legislation as necessary, etc.
- Obtain liability insurance for the PC, and assure that prior to opening of the Locks, any contracted/certified operators likewise obtain insurance (note that insurance needs will be very modest prior to re-opening of the Locks)
- Oversee environmental conditions (assessment and mitigation) as part of due diligence, including obtaining Prospective Purchaser Agreement if necessary
- In preparation for opening, seek a tourism grant to develop and implement a marketing and promotion campaign including target markets, advertising and subsidized operating support in the early years.
- Initiate private fund-raising campaign (i.e. charitable, tax-deductible private donations) for both operational and capital funds, including Phase I.

CAPITAL REPAIRS

- Secure approval of permits for repair
- Negotiate repair work plan with affected parties – Corps, etc.
- Bid out repair project; select bidder; negotiate contracts
- Oversee the repair project (construction management) (the project repair budget includes a 30% contingency line item plus 20% for engineering and permitting)

WILLAMETTE FALLS LOCKS: PHASE I EXPENSES & REVENUE/FUNDING

Phase I: March 2020-2024 (Pre-opening, operating costs)	PC Operations Before & During Capital Improvements	
	Annual Expenses	\$135,000 PC Staffing (Director/Project Manager) 1.0 FTE or contracted position to oversee transition. \$165,000 Average/year in legal and consulting fees Depending on the expertise of PC Staff, will need Technical assistance, legal, lobbying, preparation of bid documents, construction management, office and administration. \$ 5,000 Insurance \$ 45,000 Contingency \$350,000 Total Expenses
	Annual Revenue/Funding	\$ 125,000 Annual industry funding (Tourism and Marine grants) \$150,000 Annual allocation from Metro, Port, Clackamas County \$75,000 Other annual contributions (Cities of West Linn, Oregon City, Wilsonville, Lake Oswego, Gladstone, Milwaukie, Newberg, Portland, Canby; Marion and Yamhill counties, and others)* <u>\$TBD</u> Private fund-raising efforts \$350,000 Total Revenue/Funding**
	Balance	\$0 Total Balance

* Other potential sources include federal funds, tribal contributions, and PGE

** Does not include in-kind contributions that may be made available to the PC – office space, etc. Note also that some funding sources may not initially commit to the entire Phase I period, and may therefore require renewal based on satisfactory performance.

PHASE II: 2025 AND BEYOND (POST-REPAIR & ONGOING OPERATION)

Expected Activities

OPERATIONS

- Continue to administer the PC – oversee adherence to any requirements of funding entities; maintain insurance; administer operator certification program
- Operate the Locks, either directly or through IGA/contract with separate public or private entity
 - Certification program required for non-PC staff operation (commercial operators, State/local government staff)
- Fund raise/marketing
- Secure long-term operating funding as set forth in Table below – some combination of user fees paid by commercial entities (e.g. barge operations), tourism operators (tour boats to the wine country, etc.), and private recreational users in the scenarios.
- Promote commercial use of the Locks through collaboration with Economic Development entities, tourism entities, private industry
- Ongoing maintenance directly or through contractors; major maintenance as needed.

WILLAMETTE FALLS LOCKS: PHASE II EXPENSES & REVENUE/FUNDING

Phase II: 2024 and beyond – post-reopening operating plan)	Preferred Alternative - (Commercial & Recreational Use)	
	Annual Expenses	<p>\$ 135,000 PC Staffing (Director/Project Manager) 1.0 FTE or contracted position responsible for oversight of certification program, contracts and maintenance as well as marketing</p> <p>\$ 45,500 Recreational boating hours (May-Oct., 26 weeks, at 35 hours/week). Assume a \$50/hour fee to operate during hours of operation.</p> <p>\$270,000 Annual Maintenance</p> <p>\$110,000 5-Year Maintenance Fund</p> <p>\$ 0 Sinking Fund*</p> <p>\$ 50,000 Insurance</p> <p>\$610,500 Total Expense</p>
	Annual Revenue/Funding	<p>\$203,500 1. Barged commodities (incl. aggregate and paper) @ approx. 35-cents/ton**</p> <p>\$203,500 2. Recreational boats (all motorized boats, and non-motorized craft over 10') Recommended funding: Boat licensing fee addition*** Transition funding (i.e. until the creation of a boat license fee addition): Passenger fee @ approximately \$5 per passenger****</p> <p>\$203,500 3. Tour boats Initial funding: Passenger fee @ approximately \$5 per passenger, until Tourism marketing grants or Marine fuel Tax increase Transition funding (until Marine fuel tax increase): Tourism marketing grants Long-term: Marine fuel tax increase</p> <p>\$610,500 Total Revenue/Funding</p>
	Balance	<p style="text-align: center;">\$0 Total Balance</p>

* Defer sinking fund to future grants for major rehab of gates and/or flood repair

** Based upon 2-barge lockage @ 700 tons per barge

*** Recreational boat Options:

- 15-cent/foot increase to statewide boat licensing fee
- 86-cent/foot increase to North Willamette Valley (8 county) boat licensing fee (Multnomah, Washington, Clackamas, Marion, Yamhill, Polk, Benton, Linn counties)

**** Strategic Plan for Water-based Tourism in Clackamas County, 2018 – identifies the potential for 15,000 recreational boat lockages. At 2.7 persons per boat and \$5 per person, potential revenue = \$202,500. This would start out lower and grow to the target over time.

Other Notes:

1. A reopened Locks will result in an estimated reduction of 1% of statewide greenhouse gas emissions due to an elimination of certain trucking routes related to aggregate transportation. As such, the project could potentially generate carbon credits should the State establish legislation creating a cap-and-trade program. These credits could serve as an additional revenue source.

Revenue potential from moorage fees (associated new up-river moorages) are not estimated in the above scenarios. Under this scenario, a reopened Locks will increase contributions to the Common School Fund as a portion of revenues from moorage fees collected by DSL goes into the Fund.

Appendix A

Detailed Willamette Falls Locks Pre-Opening Tasks

Administrative

- Governor appoints Board of Directors (per legislation); renew/replace appointees as terms expire
- Board to appoint executive director
- Administrative transition from SB 256 State Commission to HB ___ Public Corporation (includes discernment of legal funding from SB 256 administration)
- Form Finance and Human Resource policies for pre- and post-operation scenarios
- Contract with Army Corps of Engineers for transfer of ownership
- Contract (or work with Army Corps) for capital construction
- Finalize IGAs with local stakeholders for seed funding
- Work with USACE on training for Locks operations / Agency knowledge of facility
- Establish training plan for onboarding operations staff or minimal use business plan
- Establish preferred use of existing USACE barracks
- Adoption of bylaws for public corporation
- Obtain insurance and liability coverage
- Obtain permits for repairs
- (optional) Hire or contract administrative support

Business

- Work with stakeholders and partners on boat licensing rate
- Establish other funding strategies, as determined by Board
- Establish visitor and operation scenarios for Locks Museum
- Develop operations plan for level of desired service for Locks
- Develop maintenance strategy for Locks
- Decide on in-house vs contract operations
- Develop agreements on intent to use Locks (river users)
- Marketing responsibilities
 - Develop communication strategies for opening day, hours of operation, and predictability for interested users (recreation and commercial)
 - Discern new business opportunities and research potential markets
- Establish funding strategies
 - User fees for recreation vs boat license increase (recommendation for one or other, but not both)
 - Establish rates for “touring” vessels
 - Establish commercial rates for freight traffic
 - Establish “Friends” agency for 501(c)(3) donations

Advocacy and Partnership

- Join Pacific Northwest Waterways Association
- Regularly inform state and regional stakeholders on status of “project”
- Ensure state and regional stakeholders are jointly supporting state and federal efforts to “repair and reopen” Locks
- Participate in Willamette Falls Legacy Project and Willamette Falls and Landings Heritage Area Coalitions
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WORK DRAFT

Amendments to statutes and session laws in this draft do not reflect Legislation during the 2019 Legislative Session.

1 LC 4
2 Bill
3 11/7/19 (MAM)
4 2020 Regular Session

5
6 Relating to Willamette Falls Locks Authority; creating new provisions; amending sections 1, 2 and 4, chapter
7 734, Oregon Laws 2017; and declaring an emergency.

8
9 **SECTION 1. Definition.** As used in sections 1 to 11 of this 2019 Act, <<Willamette Falls Locks
10 project>> means:

11 (1) The project for navigation, Willamette Falls Locks, Willamette River, Oregon, authorized by
12 the Act of June 25, 1910 (36 Stat. 664, chapter 482);

13 (2) Any land in which the federal government had a property interest for the project described
14 in subsection (1) of this section as of the effective date of this 2020 Act; and

15 (3) Any improvements on the land described in subsection (2) of this section.

16 **SECTION 2. Establishment.** (1) The Willamette Falls Locks Authority is established as a public
17 corporation and shall exercise and carry out all powers, rights and privileges that are expressly
18 conferred upon the authority, are implied by law or are incident to such powers, rights and privileges.
19 The authority is an independent public corporation with a statewide mission and purposes and without
20 territorial boundaries. The authority is a governmental entity performing governmental functions and
21 exercising governmental powers but, except as otherwise provided by law, is not a unit of local or
22 municipal government or a state agency for purposes of state statutes or constitutional provisions.

23 (2) Unless otherwise provided by law, the authority is not subject to ORS chapters 182, 183, 238,
24 238A, 240, 270, 273, 276, 279A, 279B, 279C, 282, 283, 291, 292, 293 and 297 and ORS 35.550 to 35.575,
25 180.060, 180.210 to 180.235, 183.710 to 183.730, 183.745, 183.750, 190.430, 190.480, 190.490,
26 192.105, 200.035, 236.605 to 236.640, 243.105 to 243.585, 243.696, 278.011 to 278.120, 279.835 to
27 279.855, 283.085 to 283.092, 291.050 to 291.060, 357.805 to 357.895 or 656.017 (2).

28 (3) The mission of the authority is to establish ownership, oversight and management of the
29 Willamette Falls Locks project, for the purposes of:

30 (a) Enhancing the economic vitality of Oregon through facilitating the resiliency and navigability
31 of the Willamette River; and

32 (b) Repairing, maintaining, upgrading and operating the Willamette Falls Locks project and
33 associated properties and facilities for commercial, transportation, recreational, cultural, historic,
34 heritage and tourism purposes.

35 (4) The authority shall carry out the purposes described in this section and the duties of the
36 authority under sections 1 to 11 of this 2020 Act in the manner that, in the determination of the
37 authority, best promotes and implements the mission of the authority. Subject to any limitations

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Amendments to statutes and session laws in this draft do not reflect Legislation during the 2019 Legislative Session.

1 established under this chapter, the authority may take any necessary or expedient actions to:

2 (a) Enter into any agreements as necessary or expedient to perform any authorized function of
3 the authority, including but not limited to any agreements with the Assistant Secretary of the Army
4 (Civil Works) for the United States Army Corps of Engineers or other public or private entities as
5 necessary to:

6 (A) Establish ownership by the authority of the Willamette Falls Locks project;

7 (B) Repair, maintain, upgrade and operate the Willamette Falls Locks project and associated
8 property and facilities; and

9 (C) Provide for the training of personnel in operation of the navigation channel and locks;

10 (b) Ensure the financial viability of the authority;

11 (c) Promote the Willamette Falls Locks project to industries related to or interested in the
12 authority's business operations, properties or facilities; and

13 (d) Undertake improvements and maintenance activities, including dredging and channelization
14 activities, on and off premises owned, operated or under the jurisdiction of the authority, as the
15 authority determines are necessary or expedient to ensure the continued operation and utility of the
16 Willamette Falls Locks project as a navigation facility.

17 **SECTION 3. Authority members.** (1) The Willamette Falls Locks Authority shall consist of no
18 fewer than seven and no more than eleven individuals appointed by the Governor. An authority
19 member holds office for a term of four years but may be removed at any time at the pleasure of the
20 Governor. Members are eligible for reappointment. Prior to the expiration of the term of a member, the
21 Governor shall appoint a successor. If a member position becomes vacant for any reason, the Governor
22 shall appoint a successor to fill the unexpired term.

23 (2) A member of the authority must be a citizen of the United States and may not be an employee
24 of the authority. In appointing members to the authority, the Governor shall consult with the employees
25 of the authority, if any, and shall endeavor to appoint members with experience or expertise in a variety
26 of subjects related to the mission and purposes of the authority or with other experiences or expertise
27 that are important to the success of the authority. The Governor shall consider for appointment, but
28 need not be limited to appointing, representatives of:

29 (a) Federally recognized Oregon Indian Tribes with treaty interests in the Willamette Falls area;

30 (b) Regional or municipal governments;

31 (c) The marine industry;

32 (d) The tourism industry;

33 (e) Persons with experience in finance, marketing, or economic development; or

34 (f) Adjacent property owners.

35 (3) The authority shall elect one member as a chairperson and one member as vice chairperson,
36 with terms, duties and powers as determined by the authority. The authority shall adopt bylaws
37 establishing the required frequency of meetings and quorum requirements.

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1 (4) A member of the authority is not entitled to compensation, but may be reimbursed as
2 provided by the policies and procedures of the authority for any actual and necessary travel and other
3 expenses incurred by the member in the performance of the member's official duties.

4 (5) Four members of the Legislative Assembly shall act as a nonvoting observers and advisors to
5 the authority and shall be appointed as follows:

6 (a) One shall be appointed by the President of the Senate from among members of the Senate;

7 (b) One shall be appointed by the Senate Minority Leader from among members of the Senate;

8 (c) One shall be appointed by the Speaker of the House of Representatives from among members
9 of the House of Representatives; and

10 (d) One shall be appointed by the House Minority Leader from among members of the House of
11 Representatives.

12 (6) The members of the Legislative Assembly selected under subsection (5) of this section may
13 not exercise any power, right or privilege of a member of the authority.

14 **SECTION 4. Initial membership.** (1) The Governor shall appoint the initial members of the
15 Willamette Falls Locks Authority no later than 180 days after the effective date of this 2020 Act.

16 (2) Notwithstanding the term of office specified in section 3 of this 2020 Act, of the members first
17 appointed by the Governor to the authority:

18 (a) Two shall serve for a term ending one year after the date of appointment;

19 (b) Two shall serve for a term ending two years after the date of appointment; and

20 (c) Two shall serve for a term ending three years after the date of appointment.

21 **SECTION 5. Locks authority director; status of locks authority director and employees.** (1) The
22 Willamette Falls Locks Authority shall appoint an executive director. The executive director is the
23 executive officer of the authority responsible for day-to-day operations. Subject to the supervision of
24 the authority, the executive director is authorized to direct the affairs of the authority. The executive
25 director serves at the discretion of the authority and shall perform such duties as the authority
26 prescribes.

27 (2) The executive director may employ subordinate employees as the executive director deems
28 reasonable for carrying out business operations and the operation of the properties and facilities of the
29 authority, including but not limited to the operation and maintenance of the Willamette Falls Locks
30 project. The executive director may delegate any duty, function or power of the executive director to a
31 subordinate employee except as otherwise proscribed by the authority.

32 (3) The members of the authority, the executive director and the employees of the authority are
33 not state employees and are not eligible for participation in state employee health benefit plans, state
34 employee deferred compensation plans or the Public Employees Retirement System. The authority
35 shall determine the compensation and benefit package for the executive director and other employees
36 of the authority. For purposes of any laws applicable to the authority as a public corporation, including
37 but not limited to ORS 30.260 to 30.300, the members of the authority, the executive director and the

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1 employees of the authority are officers and employees of a public body.

2 (4) The authority and a state agency may enter into agreements for the state agency to provide
3 support services to the authority. If a state agency provides support services to the authority, the state
4 agency must provide the support services at the rate that the state agency would charge to other state
5 agencies for the services.

6 (5) The authority may invest in the investment pool described in ORS 294.805. For purposes of
7 ORS 294.805 to 594.895, the executive director is a local government official.

8 (6) The authority may retain private legal counsel or, notwithstanding ORS 180.060, may
9 contract for representation by the Attorney General. If the authority contracts for representation by
10 the Attorney General, the Attorney General shall charge the authority for services at the rate charged
11 state agencies for similar services.

12 **SECTION 6. Powers and duties of authority.** Except as may otherwise be provided by law, the
13 Willamette Falls Locks Authority may, within or outside the state:

14 (1) Adopt, alter, amend or repeal policies, procedures or bylaws for the organization,
15 administration, development and management of the authority.

16 (2) Enter into contracts and agreements involving property, goods or services with any public or
17 private entity as the authority deems reasonable to carry out the mission and purposes of the authority
18 or to execute any duties, functions or powers of the authority, including but not limited to:

19 (a) Contracts and agreements related to the operation of the Willamette Falls Locks project and
20 associated properties and facilities;

21 (b) The carrying out of the business operations of the authority;

22 (c) The construction, repair, maintenance, seismic stabilization, rehabilitation, upgrade or
23 insurance of authority properties and facilities; or

24 (d) To coordinate activities as needed with a dam and power plant owner licensed by the Federal
25 Energy Regulatory Commission.

26 (3) Establish advisory or technical committees and otherwise consult, cooperate or coordinate
27 with any public or private entity as the authority deems necessary or expedient to broaden
28 opportunities for public input on or to carry out the mission and purposes or duties of the authority.

29 (4) Acquire, purchase, receive, hold, control, convey, sell, manage, operate, lease, license, lend,
30 invest, improve, develop, use, dispose of and hold title in the name of the authority to property
31 constituting the Willamette Falls Locks project and associated lands, buildings, easements and museum
32 facilities, and any other real or personal property of any nature.

33 (5) Obtain any permits, approvals, or permissions needed in connection with the activities of the
34 authority.

35 (6) Exercise the power of eminent domain under ORS chapter 35 to acquire any right or interest
36 in real property as necessary or expedient to ensure the repair, upgrade, operation, maintenance or
37 access to the Willamette Falls Locks project and any associated properties and facilities.

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Amendments to statutes and session laws in this draft do not reflect Legislation during the 2019 Legislative Session.

1 (7) Sue and be sued in its own name.

2 (8) Encourage and accept grants, gifts and donations for the benefit of the authority, and subject
3 to the terms of the gift, retain, invest and use such gifts as deemed appropriate by the authority.

4 (9) Acquire, receive, hold, keep, pledge, control, convey, manage, use, lend, expend and invest
5 funds, appropriations, grants, gifts, bequests, stock and revenue from any source.

6 (10) Borrow money for the needs of the authority, in such amounts and for such time and upon
7 such terms as may be determined by the authority or the board.

8 (11) Purchase any and all insurance, operate a self-insurance program or otherwise arrange for
9 the equivalent of insurance coverage of any nature and for the indemnity and defense of the members
10 of the authority or any officers, agents, employees or other persons designated by the authority to carry
11 out or to further the mission and purposes of the authority.

12 (12) Establish charges and fees, including but not limited to charges and fees for services by the
13 authority and for the use, lease or rental of authority properties and facilities.

14 (13) Contract for law enforcement or security services for authority properties and facilities.

15 (14) Establish and exercise broad operational authority over the Willamette Falls Locks project
16 and associated properties and facilities, including but not limited to establishing days and times of
17 service and a certification program to enable self-operation of the navigation canal and locks by certain
18 users.

19 (15) Establish an operations training program that provides education for all operators of the
20 Willamette Falls locks system, including but not limited to employees and volunteers of the authority,
21 contractors, or commercial operators, to operate the locks in conformance with all safety and
22 operational requirements.

23 (16) Perform any other acts that in the judgment of the authority are necessary or expedient in
24 accomplishing the public mission and purposes described in section 2 of this 2020 Act or carrying out
25 the powers granted by sections 1 to 11 of this 2020 Act.

26 **SECTION 7. Creation of tax-exempt entity by authority.** (1) Pursuant to section 6 of this 2020 Act,
27 the Willamette Falls Locks Authority may create and maintain an entity that is exempt from federal
28 income tax under section 501(c)(3) of the Internal Revenue Code, as amended, for the purpose of
29 advancing the mission of the authority.

30 (2) Any entity created by the authority under subsection (1) of this section shall be considered:

31 (a) A unit of local government for purposes of ORS 190.003 to 190.130;

32 (b) A public body for purposes of ORS 30.260 to 30.300 and 307.112;

33 (c) A public agency for purposes of ORS 200.090; and

34 (d) A public corporation for purposes of ORS 307.090.

35 **SECTION 8. Revenue bonds.** (1) The Willamette Falls Locks Authority may from time to time issue
36 and sell revenue bonds in accordance with ORS Chapter 287A, except that ORS 287A.150 (2) to (6) do
37 not apply to revenue bonds issued by the authority. Revenue bonds issued by the authority are not to

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1 any extent a general obligation of the authority nor a charge upon any revenues or property of the
2 authority not specifically pledged as security for the revenue bonds. An obligation described in this
3 section is not an indebtedness of the State of Oregon.

4 (2) Revenue bonds issued by the authority pursuant to ORS chapter 287A shall be considered to
5 be bonds of a political subdivision of the State of Oregon for the purposes of all laws of the state.

6 (3) The authority may, pursuant to ORS 287A.360 to 287A.380, issue refunding bonds of the same
7 character and tenor as the revenue bonds replaced by the refunding bonds.

8 **SECTION 9. Financing agreements.** (1) As used in this section:

9 (a) <<Credit enhancement agreement>> means any agreement or contractual relationship
10 between the Willamette Falls Locks Authority and any bank, trust company, insurance company, surety
11 bonding company, pension fund or other financial institution providing additional credit on or security
12 for a financing agreement or certificates of participation.

13 (b) <<Financing agreement>> means a lease-purchase agreement, an installment sale
14 agreement, a loan agreement, note agreement, short-term promissory notes, commercial papers, lines
15 of credit or similar obligations or any other agreement to finance real or personal property that is or
16 will be owned and operated by the authority, or to refinance previously executed financing agreements.

17 (c) <<Personal property>> means tangible personal property, software and fixtures.

18 (d) <<Property rights>> means, with respect to personal property, the rights of a secured party
19 under ORS chapter 79, and, with respect to real property, the rights of a trustee or lender.

20 (e) <<Software>> means software and training and maintenance contracts related to the
21 operation of computing equipment.

22 (2) The Willamette Falls Locks Authority may enter into financing agreements in accordance
23 with this section, upon such terms as the authority determines to be necessary or desirable. Amounts
24 payable by the authority under a financing agreement are limited to funds specifically pledged,
25 budgeted for or otherwise made available by the authority. If there are insufficient available funds to
26 pay amounts due under a financing agreement, the lender may exercise any property rights that the
27 authority has granted to the lender in the financing agreement against the property that was purchased
28 with the proceeds of the financing agreement, and may apply the amounts so received toward payments
29 scheduled to be made by the authority under the financing agreement.

30 (3) The authority may:

31 (a) Enter into agreements with third parties to hold financing agreement proceeds, payments
32 and reserves as security for lenders, and to issue certificates of participation in the right to receive
33 payments due from the authority under a financing agreement. Amounts held pursuant to this
34 paragraph shall be invested at the direction of the authority. Interest earned on any investments held
35 as security for a financing agreement may, at the option of the authority, be credited to the accounts
36 held by the third party and applied in payment of sums due under a financing agreement.

37 (b) Enter into credit enhancement agreements for financing agreements or certificates of

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Amendments to statutes and session laws in this draft do not reflect Legislation during the 2019 Legislative Session.

1 participation, provided that the credit enhancement agreements must be payable solely from funds
2 specifically pledged, budgeted for or otherwise made available by the authority and amounts received
3 from the exercise of property rights granted under the financing agreements.

4 (c) Use financing agreements to finance the costs of acquiring or refinancing real or personal
5 property, plus the costs of reserves, credit enhancements and costs associated with obtaining the
6 financing.

7 (d) Grant leases of real property with a trustee or lender.

8 (e) Grant security interests in personal property to trustees or lenders.

9 (f) Make pledges for the benefit of trustees and lenders.

10 (g) Purchase fire, liability, flood and extended insurance coverage or other casualty insurance
11 for property that is acquired, transferred or refinanced with proceeds of a financing agreement, assign
12 the proceeds thereof to a lender or trustee to the extent of their interest, and covenant to maintain the
13 insurance while the financing agreement is unpaid, so long as available funds are sufficient to purchase
14 such insurance.

15 (4) A lease or financing agreement under this section does not cause otherwise exempt property
16 to be subject to property taxation. A lease or financing agreement is disregarded in determining
17 whether property is exempt from taxation under ORS chapter 307.

18 **SECTION 10. Audits; report to Legislative Assembly.** (1) The Willamette Falls Locks Authority
19 shall submit to periodic audits by the Secretary of State. The authority shall, no less than annually,
20 retain a public accounting firm to examine and attest to the financial operations of the authority. The
21 authority shall include the results of any public accounting in the annual report submitted to the
22 Legislative Assembly under subsection (2) of this section.

23 (2) The authority shall, not later than April 15 of each even numbered year, file an annual report
24 with the Governor and a committee or interim committee of the Legislative Assembly related to
25 economic development. The report shall describe the activities and operations of the authority during
26 the preceding calendar year.

27 **SECTION 11. Unauthorized use of facilities; penalty.** A person who gains or attempts to gain
28 unauthorized access to or use of the properties or facilities of the Willamette Falls Locks Authority in
29 violation of any use restriction or conditions imposed by the authority, including payment of fees,
30 commits a Class D violation. In addition to any enforcement officers specifically identified in ORS
31 153.005, the executive director of the Willamette Falls Locks Authority and other employees of the
32 Willamette Falls Locks Authority may issue citations for violations of this section.

33 **SECTION 12.** Section 1, chapter 734, Oregon Laws 2017, is amended to read:

34 **Sec. 1.** (1) There is established the Willamette Falls Locks Commission for the purposes described in
35 section 2 of this 2017 Act, consisting of 23 members appointed as follows:

36 (a) The Governor shall appoint:

37 (A) One member who is the chair or a member of the Clackamas County Board of County Commissioners,

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1 pursuant to a recommendation of the board;

2 (B) One member who is the chair or a member of the Marion County Board of County Commissioners,
3 pursuant to a recommendation of the board;

4 (C) One member who is the chair or a member of the Yamhill County Board of County Commissioners,
5 pursuant to a recommendation of the board;

6 (D) One member who is the president or a member of the governing body of the metropolitan service
7 district for the Portland metropolitan area, pursuant to a recommendation from the governing body;

8 (E) One member who is a representative of the Confederated Tribes of the Grand Ronde Community of
9 Oregon, pursuant to a recommendation of the tribal council;

10 (F) One member who is a representative of a Columbia River tribe that is a party to the terms of a treaty
11 of 1855 between the tribe and the United States of America;

12 (G) One member who is a representative of the State Parks and Recreation Department;

13 (H) One member who is a representative of the Port of Portland;

14 (I) One member who is a representative of the Department of Transportation;

15 (J) One member who is a representative of the Oregon Business Development Department;

16 (K) Pursuant to a recommendation by that city's governing body, one member who is the mayor or a
17 member of the governing body of each of the following cities, to represent the cities' interests in the Willamette
18 Falls navigation canal and locks:

19 (i) The City of Oregon City;

20 (ii) The City of West Linn; and

21 (iii) The City of Wilsonville;

22 (L) One member to represent the collective interests of local businesses and economic development in
23 Clackamas County, pursuant to a recommendation of the Clackamas County Board of County Commissioners;

24 (M) One member to represent the collective interests of the tourism and recreation industries in
25 Clackamas County, pursuant to a recommendation by the Clackamas County Board of County Commissioners;

26 (N) One member to represent the residents of Clackamas County, pursuant to a recommendation by the
27 Clackamas County Board of County Commissions; and

28 (O) One member to represent an environmental or ecological nonprofit organization.

29 (b) The President of the Senate shall appoint one member from among the members of the Senate.

30 (c) The Senate Minority Leader shall appoint one member from among the members of the Senate.

31 (d) The Speaker of the House of Representatives shall appoint two members from among the members
32 of the House of Representatives.

33 (e) The House Minority Leader shall appoint two members from among the members of the House of
34 Representatives.

35 (2) The term of office of each member of the commission appointed by the Governor is four years, but a
36 member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor
37 shall appoint a successor whose term begins on January 1 of the following year. A member is eligible for

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Amendments to statutes and session laws in this draft do not reflect Legislation during the 2019 Legislative Session.

1 reappointment.

2 (3) If there is a vacancy for any cause, the appointing authority shall make an appointment to become
3 immediately effective for the unexpired term.

4 (4) Members of the commission are not entitled to compensation and may not be reimbursed for travel
5 or other expenses incurred by them in the performance of their official duties.

6 (5) Members of the Legislative Assembly appointed to the commission are nonvoting members of the
7 commission and act in an advisory capacity only.

8 (6) The commission shall select one of its members as chairperson and another as vice chairperson, for
9 terms and with duties and powers necessary for the performance of the functions of the offices as the
10 commission determines.

11 (7) The commission may elect an executive committee to consist of three or more members. The
12 executive committee has and may exercise all authority of the commission.

13 (8) Official action by the commission requires the approval of a majority of the voting members of the
14 commission.

15 (9)(a) The commission shall meet [~~no less than six times per year~~] at times and places specified by the
16 call of the chairperson or of a majority of the voting members of the commission. [~~The commission shall include
17 an opportunity for public comment as an item on the agenda of at least two meetings per year.~~]

18 (b) The commission shall notify federally recognized Indian tribes and known interested parties of the
19 dates and times of commission meetings.

20 (10) ORS 192.311 to 192.478 and 192.610 to 192.690 apply to the records and meetings of the
21 commission. [2017 c.734 :S.1]

22 **SECTION 13.** Section 2, chapter 734, Oregon Laws 2017, is amended to read:

23 **Sec. 2. (1) As used in this section, <<Willamette Falls Locks project>> has the meaning given that**
24 **term in section 1 of this 2020 Act.**

25 [(4)] (2) The Willamette Falls Locks Commission shall:

26 [(a) Serve as a body to advise state, local and regional government agencies on the development and
27 implementation of state policies relating to the repair, reopening, operation and maintenance of the Willamette
28 Falls navigation canal and locks;]

29 [(b) Address issues relating to the transfer of ownership, operation and financing of the navigation canal
30 and locks from a state, local and regional perspective;]

31 [(c) Make recommendations for, and assist in coordination of, funding responsibilities, including
32 possible recommendations for the formation of an intergovernmental agreement between state, local, regional
33 and federal agencies for the repair, reopening, operation and maintenance of the navigation canal and locks;]

34 [(d) Investigate a framework for the ownership, operations and management of the navigation canal
35 and locks;]

36 [(e) Negotiate ownership, operation and management of the navigation canal and locks with the United
37 States Army Corps of Engineers;]

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1 ~~[(f) Communicate state policies relating to the repair, reopening, operation and maintenance of the~~
2 ~~navigation canal and locks to the Oregon Congressional Delegation; and]~~

3 **(a) Serve as a body to advise the Governor in appointment of the initial members of the**
4 **Willamette Falls Locks Authority pursuant to section 3 of this 2020 Act;**

5 **(b) Provide advice and assistance to the Governor or the Willamette Falls Locks Authority**
6 **established under section 2 of this 2020 Act, as requested by the Governor or the board, on any matters**
7 **relating to the Willamette Falls Locks project and as necessary to facilitate an orderly transition from**
8 **the commission to the authority of responsibilities for the development and implementation of state**
9 **policies relating to the Willamette Falls Locks project; and**

10 ~~[(g)]~~ **(c) Consider any other matters the commission considers necessary with respect to advising the**
11 **Willamette Falls Locks Authority on the ownership and operation of the [navigation canal and locks]**
12 **Willamette Falls Locks project.**

13 (2) The commission may establish advisory or technical committees as the commission considers
14 necessary to aid and advise the commission in the performance of its functions. The committees may be
15 continuing or temporary committees. The commission shall determine the representation, membership, terms
16 and organization of the committees and shall appoint the members of the committees.

17 (3) Oregon Solutions at Portland State University shall provide staffing and other resources as required
18 by the commission to carry out the duties of the commission. [2017 c.734 :s.2]

19 **SECTION 14.** Section 4, chapter 734, Oregon Laws 2017, is amended to read:

20 **Sec. 4.** Sections 1 and 2 of this 2017 Act are repealed on ~~[December 31, 2023]~~ **January 2, 2021.** [2017
21 c.734 :S.4]

22 **SECTION 15.** **This 2020 Act being necessary for the immediate preservation of the public peace,**
23 **health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.**

**Local Contributions toward the Willamette Falls
Locks Effort***

**2015-17 State and Federal Advocacy and
Support to Locks Task Force**

	Clackamas County	\$158,250
	Metro	\$113,000
	Industry	<u>\$16,000</u>
Subtotal		\$287,250

**2018-19 Due Diligence and support to Locks
Commission**

	Clackamas County	\$120,000
	Metro	\$120,000
	Marine industry	\$60,000
	Tourism Industry	\$100,000
Cities		
	West Linn	\$30,000
	Oregon City	\$14,000
	Wilsonville	\$14,000
	Lake Oswego	\$12,000
	Gladstone	\$5,000
	Milwaukie	\$5,000
	Newberg	<u>\$2,500</u>
Subtotal		\$482,500

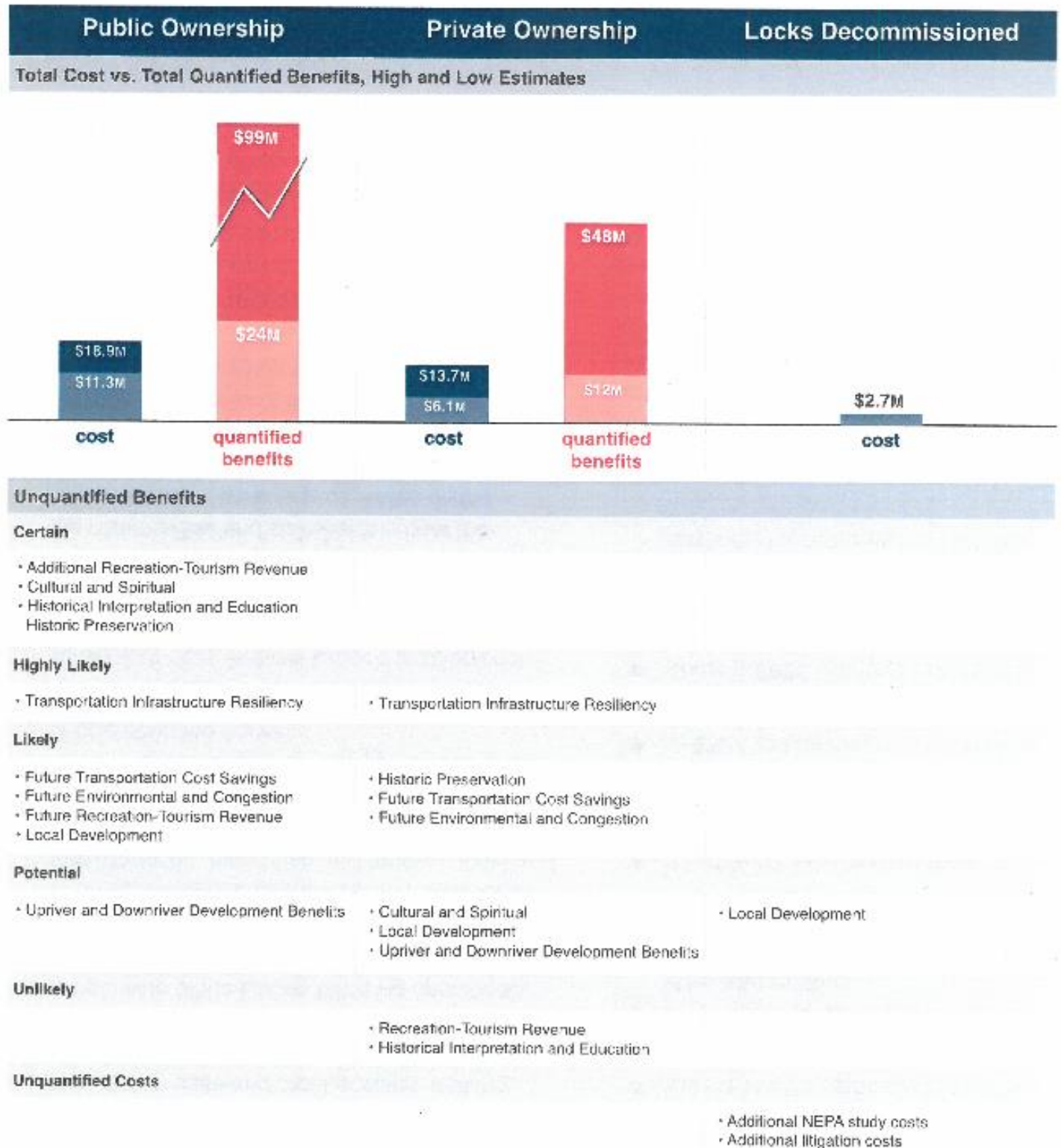
2019 Additional Fees

	Clackamas County	<u>\$3,780</u>
Subtotal		\$3,780

GRAND TOTAL **\$773,530**

*Does not include staff time expended

Figure I. Cross-Scenario Comparison



**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

A Resolution in the Matter
of Reopening the Willamette Falls Locks



Resolution No. 2014-124
Page 1 of 3

WHEREAS, On January 1, 1873, the Willamette Falls Locks opened to allow passage around the waterfall at Oregon City thereby providing access to a one river system; and

WHEREAS, in 1915, the U.S. Army Corps of Engineers purchased the Locks from the private operator thereby ensuring free public passage through the Locks; and

WHEREAS, in 1974, the Willamette Falls Locks were listed on the National Register of Historic Places; it was the first significant facility built to improve navigation on the Columbia-Snake River Inland Waterway system, and the most important through 1939; and

WHEREAS, in 1991, the Willamette Falls Locks was designated as a State Historic Civil Engineering Landmark by the American Society of Civil Engineers; and

WHEREAS, in 2006, Governor Kulongoski designated the Willamette Falls Locks as an Oregon Solutions project and formed the Willamette Falls Locks Oregon Solutions Task Force, which continues today as the One Willamette River Coalition, coordinated by the Willamette Falls Heritage Foundation, to preserve the Locks and support its continued operation; and

WHEREAS, Clackamas County is an active member of the One Willamette River Coalition, which represents a partnership of businesses, local governments, and nonprofit organizations working to ensure the Locks remain functional as a connector for the otherwise separate waterways of the Upper and Lower Willamette River; and

WHEREAS, on October 23, 2008, the Center for Economic Development Education and Research released a report under contract to the Willamette Falls Heritage Foundation, entitled *The Willamette Falls Locks: A Case Study Analysis of Potential Transfer Issues*; and

WHEREAS, from 2006 through 2010, funding provided to the Corps from the Oregon Department of Transportation, Clackamas County, and the U.S. Congress allowed for seasonal operations and selected structural upgrades, including \$2.2 million in funds from the American Recovery and Reinvestment Act of 2009 (PL 111-5); and

WHEREAS, in November, 2011, the Willamette Falls Locks were placed into "non-operational" status and on short notice were closed to vessel passage based upon an engineering assessment that identified safety concerns of potential failure; and

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

A Resolution in the Matter
of Reopening the Willamette Falls Locks



Resolution No. 2014 - 124
Page 2 of 3

WHEREAS, closure has placed a severe hardship on commercial, recreational, and tribal river users, including businesses which have used the Willamette Falls Locks for 127 years for transporting aggregate, logs, and other goods and conducting dredging and towing operations; and

WHEREAS, in March 2012, the National Trust for Historic Preservation declared the Willamette Falls Locks as one of the most threatened National Treasures, thereby providing added technical assistance; and

WHEREAS, in 2012, the Historic Preservation League of Oregon (now Restore Oregon) named the Willamette Falls Locks as one of its 10 "Most Endangered Places"; and

WHEREAS, the Locks are a primary historic asset under applications being prepared for designation of the area at the Willamette Falls as State and National Heritage Areas; and

WHEREAS, on September 23, 2013, the Corps of Engineers gave notice of their intent to initiate a public consultation process under Section 106 of the National Historic Preservation Act to determine whether the closure action had adverse effects on the historic integrity of the Locks based upon the defining qualities and features that made the Locks eligible for listing on the National Register of Historic Places; and

WHEREAS, on May 15, 2014, the Corps of Engineers released their finding of historic adverse effects under Section 106 of the Historic Preservation Act and announced their intent to proceed with development of an agreement to establish how to best "avoid, minimize or mitigate" the identified adverse effect to the historic character of the Locks; and

WHEREAS, on September 30, 2014, the economics consulting firm ECONorthwest, under contract to the Willamette Falls Heritage Foundation, published the *Willamette Locks Potential Report*, providing information on potential operating costs and community benefits of reopening the Locks; and

WHEREAS, Clackamas County has supported funding for the Locks through its federal legislative agenda and has also contributed funding toward the *Willamette Locks Economic Potential Report* conducted by ECONorthwest.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

A Resolution in the Matter
of Reopening the Willamette Falls Locks



Resolution No. 2014- 124
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**NOW THEREFORE, the Clackamas County Board of County Commissioners do hereby
resolve as follows:**

1. Clackamas County urges the Corps of Engineers to reopen the Willamette Falls Locks to general public commercial, recreational, and cultural marine traffic.
2. Clackamas County thanks the Corps of Engineers for working with local stakeholders to assess and mitigate the adverse effects of the closure and urges the Corps of Engineers to expedite the needed repairs and craft a plan for sustainable operations of the Locks.
3. Clackamas County supports recognition of the Willamette Falls Locks in the Regional Transportation Plan and inclusion of the Willamette Falls Locks as a Metro Joint Policy Advisory Committee on Transportation (JPACT) federal priority.
4. Clackamas County supports creation of a State Task Force to work with the Corps of Engineers to develop a plan for sustainable operations of the Willamette Falls Locks.
5. Clackamas County urges the Oregon Congressional delegation to support the expedited repair and reopening of the Willamette Falls Locks.

DATED this 18th day of December, 2014

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary