

## Policy for Donations and Contributions

Prior to TEA-21, 23 U.S.C. 323's provision for non-Federal share credits was limited to the fair market value of real property, funds, materials, and services that had been donated by private citizens and incorporated into Federally funded projects. The amended section 323 expanded the non-Federal share credit provision to include the fair market value of lands acquired by states and local governments in accordance with subsection (b), and local government contributions of real property, funds, and materials. The expanded non-Federal share provisions of section 323 apply to projects where the initial project agreement was executed on or after June 9, 1998. The intent of this provision was to provide a means of leveraging the Federal funds apportioned to each State by providing a credit based on the value of publicly owned assets incorporated into Federally funded projects.

There are, based on current Office of Real Estate Services (ORES) policy, certain exemptions to the non-Federal share credit provisions of section 323. Non-Federal share credits are not available for: (1) lands acquired with *any* form of Federal financial assistance, and (2) lands currently incorporated within the operating right-of-way limits of a transportation facility.

TEA-21 establishes how the value of donations by private individuals is to be determined. Property purchased by local public agencies or states in advance of project authorization are not donations and are to be valued on the basis of historic cost or current fair market value at the state's or local public agency's election.

The change to section 323 was part of FHWA's efforts to provide innovative financing to local governments. More and more, local governments are dealing with tighter budgets and less revenue. By providing flexibility in this arena, local governments are given a greater opportunity to qualify for Federally funded projects.

The provisions of section 323 are (and illustrated in Appendix A):

### 23 U.S.C. 323

#### Sec. 323. Donations and credits

- (a) Donations of Property Being Acquired. - Nothing in this title, or in any other provision of law, shall be construed to prevent a person whose real property is being acquired in connection with a project under this title, after he has been fully informed of his right to receive just compensation for the acquisition of his property, from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, to a Federal agency, a State or a State agency, or a political subdivision of a State, as said person shall determine.
- (b) Credit for Acquired Lands. -
  - (1) In general. - Notwithstanding any other provision of this title, the State share of the cost of a project with respect to which Federal assistance is provided from the Highway Trust Fund (other than the Mass Transit Account) may be credited in an amount equal to the fair market value of any land that -
    - (A) is lawfully obtained by the State or a unit of local government in the State;
    - (B) is incorporated into the project;
    - (C) is not land described in **section 138\***; and
    - (D) the Secretary determines will not influence the environmental assessment of the project, including -
      - (i) the decision as to the need to construct the project;
      - (ii) the consideration of alternatives; and
      - (iii) the selection of a specific location.
  - (2) Establishment of fair market value. - The fair market value of land incorporated into a project and credited under paragraph

(1) shall be established in the manner determined by the Secretary, except that -

- (A) the fair market value shall not include any increase or decrease in the value of donated property caused by the project; and
- (B) the fair market value of donated land shall be established as of the earlier of -
  - (i) the date on which the donation becomes effective; or
  - (ii) the date on which equitable title to the land vests in the State.
- (3) Limitation on applicability. - This subsection shall not apply to donations made by an agency of the Federal Government.
- (4) Limitation on amount of credit. - The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project.
- (c) Credit for Donations of Funds, Materials, or Services. - Nothing in this title or any other law shall prevent a person from offering to donate funds, materials, or services or a local government from offering to donate funds, materials, or services performed by local government employees, in connection with a project eligible for assistance under this title. In the case of such a project with respect to which the Federal Government and the State share in paying the cost, any donated funds, or the fair market value of any donated materials or services, that are accepted and incorporated into the project by the State transportation department shall be credited against the State share.
- (d) Procedures. - A gift or donation in accordance with subsection (a) may be made at any time during the development of a project. Any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act of 1969 shall clearly indicate that -
  - (1) all alternatives to a proposed alignment will be studied and considered pursuant to such Act;
  - (2) acquisition of property under this section shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and
  - (3) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

\* **(Section 138)**, Preservation of Parklands – It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204, Federal Lands Highways Program, of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.)

To help understand section 323, especially real property donations, a number of questions and answers were developed. These identify some of the more common scenarios.

### **Questions and Answers**

#### **Section 1301 of TEA-21, Advance Acquisition of Real Property and Donations and Credits**

**Q1.** Is there any significance in the change from using the term "right-of-way" to "real property?"

**A1.** Yes. There is legal significance to changing the term "right-of-way" to "real property." The term "real property" generally refers to any interest in land. The term "right-of-way," on the other hand, generally refers to a longitudinal strip of land used for transportation purposes. For example, the amended 23 U.S.C. 156 permits States to retain the Federal share of net income from the sale or lease of *real property* acquired with Federal assistance from the Highway Trust Fund. In this instance, the term "real property" provides for States to retain the Federal share of net income from the sale or lease real property located both within and outside of the right-of-way. In the amended 23 U.S.C. 108 (a), the use of the term "real property" takes into account that not all acquired real property will ultimately be incorporated into Federally funded projects. The term also encompasses property that may be required for transportation enhancements, environmental mitigation, or CMAQ projects.

**Q2.** Will the allowable credit for early acquisitions be the historic cost incurred or the current fair market value of the acquired property?

**A2.** The allowable credit for early acquired lands may be based on either the current fair market value or historic acquisition cost of such lands. The method selected (i.e., current fair market value or historic acquisition cost) by the State must be used on a consistent basis and specified in the State's Right-of-Way Manual. The State's Right-of-Way Manual may also specify certain criteria which would allow for use of the alternate method. For example, a State's Right-of-Way Manual may require that historic acquisition costs be used as the primary basis for credit purposes *and* that current fair market value would be used in those instances where: (1) there has been a significant lapse in time since the property was acquired, or (2) there has been a significant change in market conditions (not caused by the project) since the property was acquired.

**Q3.** Can the credit for early acquired lands include all costs associated with the early acquisition such as relocation expenses, property management costs, and costs incidental to the purchase, e.g., appraisal fees, recording costs, etc.?

**A3.** No. The allowable credit for early-acquired lands is limited to the current fair market value or historic acquisition costs of such lands (see above). Federal reimbursement of other costs associated with the acquisition are subject to the requirements of the amended 23 U.S.C. 108 (c).

**Q4.** Will credit for the cost of early acquisitions before the passage of TEA-21 be allowed?

**A4.** Yes, provided the relevant project agreement is executed on or after June 9, 1998.

**Q5.** If an agency decides to acquire all of the project right-of-way with its own funds and apply the value of the property incorporated into the project toward its share of the cost of construction, what will the acquiring agency be required to provide to the Federal funding agency to support the amount of the desired credit?

**A5.** The agency must provide documentation supporting the amount of credit sought for the acquired lands. The documentation must include: (1) a certification by the agency that the requirements for acquired lands specified in 23 U.S.C. 323 (b)(1) were satisfied, and (2) evidence supporting either the current fair market value (e.g., copies of the Certificates of Value or Review Appraiser Statements) or historic acquisition costs (e.g., closing statements, etc.) of the acquired lands.

**Q6.** When a project advances to the construction authorization stage, the final cost of the acquired right-of-way is frequently unknown due to outstanding condemnation cases. Assuming the agency has acquired the required

property with its own funds and desires a credit toward the cost of construction, will the allowed credit be limited to the acquisition costs incurred as of the date of the credit application?

**A6.** In such cases, while the initial allowable credit would be limited to the current fair market value of the acquired lands as of the date of the project agreement, the allowable credit may be adjusted upon resolution of the outstanding condemnation case(s).

**Q7.** How will the credit be applied to innovative projects such as SIB loans? Should the credit be taken from the amount the State or local government has pledged to repay the loan?

**A7.** While there is a possibility that credit for land acquisition may be used in SIB-assisted projects, the main application of the changes in 23 U.S.C. 323 applies to standard Federal-aid project activities. The SIB is a State-backed entity that is capitalized with Federal funds and matched with non-Federal funds, at the State's traditional matching ratio. According to the SIB Guidance, SIB capitalization grants must be matched with *liquid funds*. So, at the time of capitalization, donated land, etc., would not count toward the State match. However, the non-Federal match is not required at the project-by-project loan level. The board of the SIB establishes its own requirements for repayments. It would be up to each SIB whether it found sufficient value in donated land, etc., to give up the liquid repayment funds available to lend to subsequent projects. SIBs have assisted projects that receive some portion of a project's total cost in regular Federal-aid grant funds and some portion in SIB loan funds. The matching requirements would be different for each portion of the financing. Regarding the second question, see the above reservation on whether the SIB would be willing to accept such payment. The purpose and operating characteristics of each SIB may dictate whether they would be willing to use land, materials or other non-cash contributions to fulfill repayment terms. The credit provisions will more likely apply to normal Federal-aid projects where the State matching share can be reduced by the acquisition cost of land incorporated into the project. Such credit, while available as of the effective date of TEA-21, must be determined and agreed upon as of the date FHWA and the State enter into the project agreement for the project on which the credit will be applied. Lands already used for transportation purposes, such as existing right-of way being required for a new or upgraded facility, will not be eligible for receipt of a credit.

**Q8.** Do early acquisitions by local governments or private parties for Federally funded projects need to conform to the Uniform Act requirements?

**A8.** Yes, to be eligible for reimbursement, the amended 23 U.S.C. 108 (c)(2)(A) requires that any land acquired, and relocation assistance provided, comply with the requirements of the Uniform Act. To be eligible for credit, the amended 23 U.S.C. 323 (b)(1)(A) requires that the acquired land was "lawfully obtained." In such instances, if the property was acquired for a transportation purpose under the threat of eminent domain (subsequent to the Uniform Act), the requirements of the Uniform Act would apply. If the property was acquired by other means (e.g., local government acquisition via tax delinquency or exaction), it must have been acquired in accordance with the laws of the jurisdiction in which the property is located.

**Q9.** Is park land the land described in section 138 of Title 23? Can public park land incorporated into a project which furthers the park use qualify for credit? Can public owned right-of-way incorporated into a project qualify for credit?

**A9.** 23 U.S.C. 138, 49 U.S.C. 303, and 23 CFR 771.135 describe the national policy regarding the preservation of 4(f) lands (i.e., publicly owned park and recreation lands, wildlife and waterfowl refuges, and historic sites). Federally funded projects requiring the use of such lands will not be approved unless: (1) there is no feasible and prudent alternative to the use of such land, and (2) the action includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. 23 U.S.C. 323 (b)(1)(C) prohibits non-Federal share credits for the incorporation of lands described in 23 U.S.C. 138 into Federally funded projects. Based on current Office of Real Estate Services (ORES) policy, non-Federal share credits are also not available for: (1) lands acquired with *any* form of Federal financial assistance, and (2) lands currently incorporated within the operating right-of-way limits of a transportation facility.

**Q10.** Can lands acquired as part of a project funded by the right-of-way revolving fund, where the right-of-way project has been converted to a regular Federal-aid project, be credited toward the non-Federal share of the project?

**A10.** No. A credit toward the non-Federal share of the project would not be allowed since the lands were acquired with Federal assistance.

## Calculations

Determining how to calculate donations in computing the federal share and the state/local match can be confusing. Several important notes should be remembered: 1) Donations, unlike cash, do not count directly as match. Instead, they are considered a project cost and must be calculated as such. 2) The donation value, if high enough, can reduce the Federal share of a project. 3) Obtaining an accurate value of a donation is essential in assuring the appropriate match is met.

To illustrate, let's examine two projects, A and B.

(75/25% ratio)

	<u>A</u>	<u>B</u>
Project cash costs	\$1,000,000	\$1,000,000
Donation value	250,000	350,000
Total project value	1,250,000	1,350,000
State match before donation	312,500	337,500
State match after donation	62,500	0
Federal share	937,500	1,000,000

Notice in project B, the Federal share was reduced due to the high donation value. In the case of a large donation, the amount of Federal funds cannot exceed the actual project cash costs – which for project B was \$1,000,000. The resulting pro rata was reduced to 74% for the Federal share.

As stated and shown above, donations are not direct credits against the State match in a Federal project. Had there not been a donation towards a project, there would have been a cost incurred. That's why donations are calculated as project costs.

## Documentation

Donations applied to the State's matching share must be documented. Records must show how the value placed on in-kind materials and services was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs, i.e., time sheets, time cards, etc. (This is reiterated in OMB Circular A-87, Attachment B Section 11(i) Donated Services and 49 CFR 18.24.)

## Valuation of Donations

Donated materials and services will be valued at their market value at the time of the donation. Donated services may include labor, equipment, and costs related to providing the service. Donated labor will be valued at rates consistent with those ordinarily paid for similar work in the donor's organization. If the donor does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in that location. Equipment will be valued at the fair market rental value or reasonable use rates.

The Federal program, Highway Planning and Construction (CFDA 20.205), is subject to the Office of Management and Budget (OMB) circulars A-133 and A-87. OMB circular A-133 sets standards to ensure consistency and uniformity in the administration of all federal programs. As the pass-through entity, ODOT is required to:

- Advise sub-recipients (local governments) of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.
- Monitor the activities of sub-recipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
- Consider whether sub-recipient audits necessitate adjustment of the pass-through entity's own records.
- Require each sub-recipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

OMB circular A-87 establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements. The applicable areas of that circular are as follows:

- Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.
- Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.
- The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.
- To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

In addition, Title 49, Code of Federal Regulations (CFR), Section 18.24(6) states:

Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of recipients and sub-recipients or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

Some third party in-kind contributions are goods and services that, if the recipient, sub-recipient, or contractor receiving the contribution had to pay for them, the payments would have been indirect costs. Costs sharing or matching credit for such contributions shall be given only if the recipient, sub-recipient, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

## **Agreements**

The Interagency/Intergovernmental Agreement (IGA) outlines the regulations that ODOT, the Secretary of State's Office of the State of Oregon, the Federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the local agency which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request.

If a third party (working through a local agency) donates directly to a State construction project, some form of written agreement should also be established between the third party and the local agency. This agreement should include language that requires the local government unit to adequately inform the third party that the accounting records associated with the donations are subject to audit review by both the Oregon Secretary of State and the FHWA. The agreement must also establish that the local government unit is ultimately financially responsible to meet the matching requirements if the third party donation is subsequently valued at less than originally stated.

Section XVIII – Financial Participation – of the agreement between ODOT and AOC/LOC stipulates that an advance deposit must be made by the local agency prior to commencement of the preliminary engineering, right-of-way acquisition and/or construction phases for its estimated share of each phase. Exception may be made in the case of projects where the local agency has written approval from the State to use donations and/or credits rather than cash to satisfy all or part of the matching funds requirement.

### **ODOT Accounting System Documentation**

Donations can be in the form of real property, funds, materials and services. Once the valuation has been determined, that value should be connected to the project to show the match was met. ODOT's accounting system, TEAMS, creates the billing to the various agencies, including FHWA. Since donations do not involve cash, the appropriate invoicing must be calculated differently. A new transaction code (T/C 710) was developed to record the value of a donation into TEAMS. This recording will not show up on the federal billing, however, it will remain in the system as part of the project in question – providing a good audit trail. This information could be retrieved on a project basis or shown with other donations based on the transaction code.

As ODOT employees approve invoices to pay and obtain reimbursement, they will enter the donated values into TEAMS using T/C 710. A review of the invoice will be done to ensure appropriate measures were taken to accurately account for the value of the donations.

### **Summary**

Donations offer local agencies the flexibility to qualify for projects where they might not have before. Special attention, however, must be paid to the calculation and valuation of donations. By understanding what qualifies for donations, ODOT, its employees and local agencies will be able to utilize this form of innovative financing to its fullest extent.

**DONATIONS** **(Appendix A)**  
**ELIGIBILITY FOR CREDIT AGAINST MATCH**

TYPES OF DONATIONS	ELIGIBILITY	CONDITIONS
<b>Land (ROW)</b>	<b>Private - Yes</b>	<ul style="list-style-type: none"> <li>• Appraised to determine fair market value (excluding any changes caused by project)</li> <li>• Incorporated into project</li> <li>• Donated during project development</li> </ul>
	<b>Public - Yes</b>	<ul style="list-style-type: none"> <li>• After June 9, 1998</li> <li>• State or local government owned</li> <li>• Appraised to determine fair market value (excluding any changes caused by project)</li> <li>• Donation does not influence environmental assessment</li> </ul>
<b>Funds</b>	<b>Private - Yes</b>	<ul style="list-style-type: none"> <li>• Received during life of project</li> </ul>
	<b>State - Yes</b>	
	<b>Local Government - Yes</b>	
	<b>Federal - Yes</b>	<ul style="list-style-type: none"> <li>• Land management agencies</li> <li>• Federal Lands Highway Funds (access to or within Federal or Indian lands)</li> <li>• Other Federal funds authorized by law</li> </ul>
<b>Materials</b>	<b>Private - Yes</b>	<ul style="list-style-type: none"> <li>• Market value at time of donation</li> <li>• Needed for project</li> </ul>
	<b>State - No</b>	
	<b>Local Government - Yes</b>	<ul style="list-style-type: none"> <li>• Value at fair market value</li> <li>• Needed for project</li> </ul>
<b>Services</b>	<b>Private - Yes</b>	<ul style="list-style-type: none"> <li>• Grantee must document value</li> <li>• Value similar to work by grantee or other employers</li> <li>• Needed for project</li> </ul>
	<b>Public - Yes</b>	<ul style="list-style-type: none"> <li>• Grantee must document value</li> <li>• Value similar to work by grantee or other employers</li> <li>• Needed for project</li> </ul>
<b>Equipment /Buildings</b>	<b>Private - Yes</b>	<ul style="list-style-type: none"> <li>• Value at fair rental value</li> <li>• FHWA approval necessary for use as matching share</li> <li>• Needed for project</li> </ul>
	<b>Public - No</b>	

References: 23 USC 323 as amended by TEA-21 Section 1301; 23 USC 120 as amended by TEA-21 Section 1111(a); 23 USC 133 as amended by TEA-21 Section 1108(b).



## **Procedures for Donations and Contributions**

As stated in the policy for donations and contributions, there are certain criteria to follow in order to meet the intent and scope of 23.U.S.C. 323. As described in the regulation, donations are credits to a project provided by a private party whereas contributions are derived from a Governmental Unit. These procedures will help outline what is needed to comply with the regulations and what roles each party (FHWA, ODOT, Local Agency/third party (LA), etc.) plays. Although these procedures will assist LAs, it should be pointed out that ultimate compliance with this regulation is the responsibility of ODOT.

When a LA is requesting to use donations or contributions to apply as match on a project, it's important that the LA first gets written approval from ODOT. The use of donations/contributions must also be stated in the Intergovernmental Agreement (IGA). That approval will come from Highway Finance if the match is in the form of donated materials, funds or services or from Right of Way Headquarters if the match is from credit for acquired lands. The form – **Donations/Contributions Approval Form** – is provided in Appendix A. (There are two versions of this form. The Initial Donations/Contributions Approval Form will be completed before the project commences. The Final Donations/Contributions Approval Form will be completed at the end of the project.) The top part of the form identifies the LA and the type of donation/contribution that is being requested for approval. The bottom part of the form is for signatures from the LA and ODOT. By signing, the LA will be certifying that the value of the donation/contribution will be documented in an approved manner by ODOT, the donation/ contribution has never previously received Federal funding or was paid for with Federal funds, and if the value of the donation/ contribution at the end of the project is less than the originally stated value, the LA will provide funding to make up the difference.

Depending on the category of donations/ contributions, certain documentation must be provided by the LA as follows:

### **Donated Materials**

Materials may be donated by either a Local Governmental Unit or private party. If the donation comes from a private party through the LA, the LA should enter into an agreement with the private party. The agreement should include language that requires the LA to adequately inform the private party that the accounting records associated with the donations are subject to audit review by both the Oregon Secretary of State and the FHWA. The agreement must also establish that the LA is ultimately financially responsible to meet the matching requirements if the private party donation is subsequently valued at less than originally stated.

The value of the materials should be documented to provide a reasonable determination of value. The method of valuation should be stated on the form. An example of an acceptable method is found on Appendix B.

## **Donated Funds**

Since cash can be easily documented and valued, no further explanation is needed for this category.

## **Donated Services**

With the passage of SAFETEA-LU, Local Government Units may supply labor to any project. Labor costs, usually in the form of hourly wage rates, must be shown in how the rate was determined. For example, if an engineering firm was going to donate its time to a project, the firm should be able to show that the donated value is the same rate it charges for regular jobs. To ensure the time worked has been tracked, timesheets should always be completed and provided for documentation. The person doing the work, signifying the accuracy of the data should sign the timesheets. If that person doing the work is an employee of a private entity, a supervisor or project manager should also sign the timesheet. Again, Appendix B provides an example of adequate documentation for donated services.

## **Credit for Real Property**

If real property is used as credit against the LA's share of the match, the property in question must meet certain criteria. The LA may be credited in an amount equal to the fair market value of any land that ODOT can **provide for FHWA's acceptance a certification that the acquisition satisfied the following conditions:**

- (A) is lawfully obtained;
- (B) is incorporated into the project;
- (C) is not land described in section 138 – i.e. park lands;
- (D) is acquired in accordance with the provisions of 49 CFR part 24;
- (E) is in compliance the requirements of title VI of the Civil Rights Act of 1964; and
- (F) ODOT determined, and FHWA concurred, that acquisition/ownership of the land did not influence the environmental assessment of the project, including -
  - (i) the decision as to the need to construct the project;
  - (ii) the consideration of alternatives; and
  - (iii) the selection of a specific location.

The fair market value shall not include any increase or decrease in the value of donated property caused by the project and the fair market value of donated land shall be established as of the earlier of -

- (i) the date on which the donation becomes effective; or
- (ii) the date on which equitable title to the land vests in the State or Local Agency.

In following the guidance set forth in the Right of Way manual, Right of Way Headquarters will ensure the property in question qualifies as credit against the LA's share of the match.

### **Donation/Contribution Values Placed in TEAMS**

As credits for donations/contributions are used against a project, those values will be placed into TEAMS. There will be a specially designated screen identified for posting these transactions. As they are entered into TEAMS, they will be using transaction code 710, which will signify to the system that the cost is not an actual cost but a credit for donation/ contribution. The total value of the donation/contribution will then be captured in TEAMS so a complete picture of a project will be available. Only after the donation/contribution (or any portion thereof) has been incorporated into the project should the value be placed into TEAMS.

### **Completion of Project**

The documentation mentioned above will be gathered as a project proceeds. Upon completion of a project, all the documentation will be delivered to Highway Finance for final review. Once approved for completeness, the documents, along with a final signed-off **Donations/Contributions Approval Form**, will be placed in the project file (located in Highway Finance) to be retained the designated time frame.

## Initial Donations/Contributions Approval Form

Name of Local Agency	Date
Contact Person	Phone Number
Project Name	Key Number
Region Contact Person	Phone Number

### Type and Description of Donation/Contribution

Materials     
  Services     
  Funds     
  Credit for Property

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\$ \_\_\_\_\_  
Stated Value

**We certify that the value of the donation/contribution will be documented in an approved manner by ODOT and incorporated into the project, the donation/contribution has never previously received Federal funding or was paid for with Federal funds, and if the value of the donation/contribution at the end of the project is less than the originally stated value, we will provide funding to make up the difference.**

Signature and Title of Local Agency	Date
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**ODOT Review and Concurrence**

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Department

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Contact Person

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Signature

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Phone Number

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Date

## Final Donations/Contributions Approval Form

_____ Name of Local Agency	_____ Date
_____ Contact Person	_____ Phone Number
_____ Project Name	_____ Key Number
_____ Region Contact Person	_____ Phone Number

### Type and Description of Donation/Contribution

Materials       Services       Funds       Credit for Property

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\$ \_\_\_\_\_  
Stated Value

**We certify that the value of the donation/contribution has been documented in an approved manner by ODOT and incorporated into the project, the donation/contribution has never previously received Federal funding or was paid for with Federal funds, and if the value of the donation/contribution was less than the originally stated value, we will provide funding to make up the difference.**

_____ Signature and Title of Local Agency	_____ Date
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**ODOT Review and Concurrence**

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Department

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Contact Person

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Signature

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Phone Number

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Date

## Examples of Acceptable Documentation for Donations and Contributions

### Labor and Services:

Documentation should include verification of the actual hours worked (or to be worked) **and** the value (or hourly rate) of the employee/sole proprietor/volunteer. Labor and services donated from a private entity can be credited as match against a federal-aid share. While contributions from a public entity of labor or services cannot be credited as match, it can be charged as a direct cost to the project as appropriate and reimbursed at the federal pro-rata share. Below are some (but not all) examples of acceptable documentation:

1. Timesheets of an employee of a private entity that record actual hours worked, signed by the person doing the work and a supervisor or project manager.
2. A letter on company letterhead of a sole proprietor listing the hours worked and signed by the owner.
3. A payroll or personnel record that shows the person(s) actual salary rate.
4. Timesheets (individual or group) of volunteers who worked on a project, which lists hours worked by each, initialed or signed by each, and valued at a rate commensurate with the appropriate job and skill level (otherwise, the rate should be calculated at minimum wage). If Davis-Bacon wages were applicable to the federal-aid project (construction phase) then the work would be valued at the applicable Davis-Bacon rates.

### Materials:

Documentation should include the quantity of material used (or to be used) on the project **and** the value (or unit cost) of the material consumed. Material donated from a private entity or contributed from a public entity can be credited as match against the federal-aid share. Below are some (but not all) examples of acceptable documentation:

1. Invoice that shows the purchase price of the material.
2. Inventory records that list the unit cost and current value of the material.
3. Job cost records that list the costs charged to the project.
4. Independent outside appraisal of the material donated.

### Real Property

Please see the ODOT Right of Way Manual for donations and contributions of real property and appropriate valuation.