

TRANSFER AGREEMENT
GLOBAL ROAD SAFETY FACILITY – PHASE 3 MULTI-DONOR TRUST FUND
(TRUST FUND NO. TF073163)
DISBURSEMENT TRUST FUND No. TF0B1200

TRANSFER AGREEMENT (hereinafter the “Agreement”) between the International Bank for Reconstruction and Development and the International Development Association (collectively, the “Bank”), acting as trustee of the Global Road Safety Facility – Phase 3 Multi-Donor Trust Fund (Trust Fund No. TF073163) (the “Trust Fund”), and the Asian Development Bank (“ADB”, and together with the Bank, collectively, the “Parties” and each a “Party”) through a disbursement trust fund TF No. TF0B1200.

PREAMBLE

WHEREAS, the Trust Fund has been established through trust fund administration agreements/arrangements (the “Administration Agreements/Arrangements”) between the Bank and each of the donors (collectively, the “Donors”) contributing funds to the Trust Fund;

WHEREAS, pursuant to the Administration Agreements/Arrangements, Multilateral Development Entities (as such term is defined therein) may access Trust Fund resources to carry out activities to help achieve the Trust Fund’s objectives;

WHEREAS, ADB is named in the Administration Agreements/Arrangements as an eligible Multilateral Development Entity under the Trust Fund, and in such a capacity wishes to access Trust Fund resources in accordance with the terms of this Agreement;

WHEREAS, the Trust Fund’s Facility Executive Board has approved an allocation of funds to ADB for the activities to be implemented by ADB as contemplated in its funding request for the establishment of an Asia-Pacific Road Safety Observatory; and

WHEREAS, the Bank and ADB now wish to enter into this Agreement relating to the arrangements for the transfer of Trust Fund resources to ADB and the administration and use of such resources by ADB.

NOW, THEREFORE, the Bank and ADB hereby agree as follows:

1. DEFINITIONS

1.1. Capitalized terms used herein, but not otherwise defined in this Agreement, shall have the meanings ascribed to them in the Administration Agreements/Arrangements.

2. TRANSFER OF FUNDS BY THE BANK

2.1. Promptly following the effectiveness of this Agreement, ADB shall submit to the Bank a cash transfer request (the “Cash Transfer Request”), requesting for the Bank to transfer the allocation approved

by the Facility Executive Board (the “Allocation”) in the amount of five hundred forty thousand United States dollars (US\$ 540,000) to ADB. The Cash Transfer Request shall: (i) be substantially in the form attached hereto as Annex A (Form of Cash Transfer Request); (ii) contain all necessary information therein; and (iii) be signed by an Authorized Signatory (as defined below).

2.2. Upon receipt of the complete Cash Transfer Request from ADB, and subject to availability of resources in the Trust Fund, the Bank shall transfer the amount of the Allocation in United States dollars from the Trust Fund to ADB in one lump sum.

2.3. Transfer of Trust Fund funds from the Bank to ADB under this Section 2 shall be made to the depository account designated by ADB in the relevant Cash Transfer Request in United States dollars unless otherwise agreed by the Bank.

2.4. Upon transfer of funds, the Bank shall have no responsibility, fiduciary or otherwise, for the use of Trust Fund funds transferred and activities carried out therewith, nor shall it have any responsibility for collection of any funds due to ADB from any recipient of Trust Fund funds or any other entities. ADB shall be responsible for reporting to the Facility Executive Board on the use of Trust Fund funds transferred to it (including on any collection of funds from any recipient of Trust Fund funds or any other entities) and its activities carried out therewith as set out in paragraph 5.2 and Section 6 below. The Bank does not assume any responsibility or liability towards any third party as a result of the use by ADB of, or implementation of any activities funded with, the Trust Fund funds transferred to ADB.

3. ADMINISTRATION OF FUNDING ACCOUNT BY ADB

3.1. Except as provided under paragraph 3.2 below, ADB agrees that the Trust Fund funds transferred to it under this Agreement shall be kept separate and apart from the funds of ADB in a dedicated account maintained and administered by ADB (the “Funding Account”) in accordance with its policies and procedures. ADB shall maintain separate records and ledger accounts in respect of the funds deposited in the Funding Account and disbursements made therefrom.

3.2. In order to assist in the defrayment of the costs of administration and other expenses incurred by ADB under this Agreement, ADB may deduct from the amount of Allocation transferred to it, and retain for its own account, an amount equal to five per cent (5%) of the Allocation amount.

3.3. Subject to the terms of this Agreement, ADB may invest all funds in the Funding Account in accordance with the policies and procedures of ADB concerning the investment of funds in respect of which it acts as trustee. Investment income earned on the investment of funds transferred to ADB (except for investment income earned on the investment of funds retained by ADB for its own account pursuant to paragraph 3.2 above) shall be held by ADB in the Funding Account until the Bank requests ADB to return it to the Bank into such account as the Bank may designate. ADB shall maintain a record of any such income and report such information to the Trustee pursuant to paragraph 6.2 below.

3.4. ADB may convert Trust Fund funds received by it in the Funding Account into other currencies to facilitate their administration in accordance with the policies and procedures of ADB; provided that unless an additional Allocation is made by the Facility Executive Board, ADB shall not be entitled to receive any additional funding from the Trust Fund to cover any shortfalls where, as a result of exchange rate fluctuations, the funds transferred prove to be insufficient to complete activities contemplated under the funding request based on which an Allocation has been made.

4. USE OF FUNDS BY ADB

4.1. Subject to other terms of this Agreement, ADB shall be responsible for the use of funds transferred by the Bank and the activities carried out therewith in accordance with:

- (a) ADB's policies and procedures, including but not limited to its procurement, financial management, disbursement and safeguard policies, its framework to prevent and combat fraud and corruption and its screening procedures to prevent the use of Trust Fund funds to finance terrorist activities, and
- (b) the applicable terms and conditions under which the Allocation has been made, including: (i) the purpose for which the funds have been provided, and (ii) the applicable decision of the Facility Executive Board, including the approval of the funding request based on which the Allocation has been made.

4.2. ADB shall use reasonable measures, in accordance with its policies and procedures, to ensure that the Trust Fund funds provided to it are: (i) not used for the purpose of any payment, if such payment is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, and (ii) used for the intended purposes and not diverted to terrorists or their agents in line with ADB member countries' obligations to give effect to the relevant decisions of the Security Council taken under Chapter VII of the Charter of the United Nations. The Parties acknowledge that this provision does not create any obligations of ADB under the anti-terrorist financing and asset control laws, regulations, rules and executive orders of an individual member country that may apply to an ADB member country.

4.3. ADB shall ensure that any financing agreement that ADB may enter into with any recipient of Trust Fund resources (a "Financing Agreement") is consistent with the terms and conditions under which such Trust Fund resources are provided under this Agreement. In accordance with its policies and procedures, ADB shall: (a) inform the Facility Executive Board, as appropriate, of any contractual remedies that are exercised by ADB under any Financing Agreements, and (b) to the extent ADB determines it practicable, afford the Facility Executive Board the opportunity to exchange views before exercising any such remedy.

4.4. If any Trust Fund funds transferred to ADB are not used in accordance with the terms of this Agreement, ADB shall take necessary actions within its control to address the matter, including, in accordance with its policies and procedures, using reasonable efforts to recover, and return to the Bank, the funds that were misused. For the avoidance of doubt, if any such funds were misused due to the action of a third party without gross negligence or willful misconduct on the part of ADB, ADB shall not be required to return any such funds, which are not recovered by ADB notwithstanding its reasonable efforts.

4.5. Promptly after the Closing Date (as defined below) or the termination of this Agreement, whichever is earlier, ADB shall return to the Bank, to such account as the Bank may designate, any remaining Trust Fund funds which were transferred to ADB under this Agreement, but for which no further expenditure or disbursement is due to be incurred or made by ADB (including, but not limited to, due to a completion, cancellation or amendment of relevant activities for which the relevant Allocation was made) ("Unused Funds"), together with, for the avoidance of doubt, any gains from foreign exchange transactions, net of all fees and charges and losses. Pending return to the Bank, ADB shall hold any Unused Funds in the Funding Account, and report them to the Bank under Section 6 below.

5. EXERCISE OF CARE

5.1. ADB shall perform its functions as contemplated in this Agreement, and shall exercise the same degree of care and diligence in the discharge of its functions under this Agreement as it exercises with respect to the administration and management of third party funds administered by ADB.

5.2. Subject to the terms of this Agreement, ADB shall do any and all such acts as may be necessary or appropriate for the proper administration of the Funding Account, and shall be responsible for reporting to the Facility Executive Board on the use of Trust Fund funds transferred to ADB and delivery of activities financed by them, in accordance with the terms of this Agreement.

5.3. ADB acknowledges and agrees that:

(a) if the Facility Executive Board reasonably determines through its decision by consensus and after consultation with ADB that ADB has failed to comply with its obligations under this Agreement to a material extent, then ADB and the Facility Executive Board shall agree on timely and appropriate measures to be taken to resolve the matter. If the Facility Executive Board and ADB fail to agree on measures to be taken, or ADB fails to take relevant measures, as may be agreed between the Facility Executive Board and ADB, then the Facility Executive Board may instruct the Bank, upon thirty (30) days prior written notice, to suspend the cash transfer of Trust Fund funds under any Allocation to ADB, until such time as the measures have been taken;

(b) any Donor may review or evaluate activities financed by the Trust Fund resources transferred to ADB at any time up to closure of the Funding Account; provided that: (a) the Donor shall have agreed with ADB on the scope and conduct of such review or evaluation, (b) unless otherwise agreed by ADB, ADB has received confirmation from the relevant Donor that all associated costs, including any costs incurred by ADB, will be borne by the Donor, and (c) ADB shall provide all relevant information within the limits of ADB's applicable policies and procedures. It is understood that any such review or evaluation will not constitute a financial, compliance or other audit of the Funding Account;

(c) If ADB uses the Trust Fund funds to provide financing(s) to recipient(s) under Financing Agreement(s), subject to the consent of any relevant Recipients, ADB may invite representatives of the Donors to participate in its supervision missions related to the funds provided under this Agreement;

(d) Notwithstanding paragraph 6.2 below, if any Donor wishes to request, on an exceptional basis, a separate external audit of a financial statement of the Funding Account by ADB's external auditor, ADB and the requesting Donor shall first consult as to whether such an external audit is necessary. Following: (i) agreement between ADB and the Donor on the scope and terms of reference of such audit, and (ii) unless otherwise agreed between the Donor and ADB, receipt by ADB of confirmation from the Donor that the costs of such audit, including the internal costs of ADB with respect to such audit, will be borne by the Donor; ADB shall arrange for such external audit in accordance with ADB's policies and procedures; and

(e) if any Donor becomes aware of information that indicates that any Trust Fund resources transferred to ADB are not used for intended purposes, such Donor may notify the Facility Executive Board and the Bank of such information so that the Facility Executive Board may consult with ADB and/or take an action as set forth in paragraph 5.3(a) above.

5.4. For the avoidance of doubt, notwithstanding any suspension of the cash transfer of Trust Fund funds under any Allocation to ADB under paragraph 5.3(a) and/or paragraph 6.6, all of the provisions of this Agreement shall continue in full force and effect except as specifically provided in this Agreement.

6. RECORDS AND REPORTING

6.1. ADB shall, in accordance with its rules, policies and procedures, maintain books, records, documents and other evidence in accordance with its usual accounting procedures to substantiate sufficiently the use of the Trust Fund funds transferred to it.

6.2. ADB shall provide the following financial information to the Facility Executive Board, through the Bank, prepared in accordance with the accounting and reporting procedures of ADB and provided in a form and means agreed upon with the Bank:

- (a) Within sixty (60) calendar days after June 30 of each year, an annual unaudited financial report for the activities for which the Allocation to ADB was made;
- (b) Within sixty (60) calendar days after June 30 of each year, an annual unaudited financial report of the Funding Account;
- (c) Within six (6) months after the Closing Date (or within six (6) months after termination of this Agreement, if earlier), a final audited financial report of the Funding Account; and
- (d) Such other periodic financial reports for the activities for which the Allocation to ADB was made, as may be agreed upon by the Bank and the Facility Executive Board following consultation with ADB.

6.3. Unless the Bank and ADB agree otherwise, all financial reports provided under this Agreement shall be expressed in United States dollars.

6.4. ADB shall provide the Facility Executive Board, through the Bank, with progress reports for activities funded with Trust Fund funds as follows:

- (a) Within thirty (30) calendar days after June 30 of each year, an annual report on the progress of the implementation of the activities for which the Allocation to ADB was made, with reference to the results framework for the Trust Fund agreed between the Bank and the Donors as well as with the results framework for the activities for which such Allocation was approved; and
- (b) A final report on the implementation of the activities for which the Allocation to ADB was made within six (6) months following the completion of such activities, the Closing Date, or termination of this Agreement, whichever is earlier.

6.5. ADB shall provide the Bank with a list containing the names and signatures of the authorized officers of ADB (each, an "Authorized Signatory"), substantially in the form attached to this Agreement as Annex B (Form of Authorized Signatory Letter), as such list shall be revised from time to time as necessary and kept current at all times.

6.6. If ADB fails to provide to the Bank any financial or other required information in accordance with paragraphs 6.2 through 6.4 above, the Bank shall promptly notify ADB in writing of such non-compliance. If the non-compliance has continued for a period of not less than thirty (30) calendar days after the written notification from the Bank, the Bank shall inform the Facility Executive Board of the non-compliance by

ADB so that the Facility Executive Board may consult with ADB and/or take an action as set forth in paragraph 5.3(a) above.

7. NOTICES

7.1. All communications concerning this Agreement shall be made to the relevant person at the address, facsimile number, telephone number or electronic mail address as set out below, or at such other addresses or numbers as may be designated from time to time by that Party to the other in writing for that purpose.

(a) For the Bank:

International Bank for Reconstruction and Development and International Development Association, as trustee of the Global Road Safety Facility – Phase 3 Multi-Donor Trust Fund

1818 H Street, NW
Washington, DC 20433
U.S.A.

Attention: Florentina-Alina Burlacu
Transport Specialist, Global Road Safety Facility
Transport Infrastructure GP

Telephone: +1 (202) 280-3230
Facsimile: +1 (202) 522-3223
E-mail: fburlacu@worldbank.org

(b) For ADB:

6 ADB Avenue
Mandaluyong City 1550 Metro Manila
Philippines

Attention: Shiela Martinez Dela Torre, Partnership Specialist

Telephone: +63 2 8683 1052
Facsimile: +63 2 8636 2444
E-mail: smdelatorre@adb.org

8. DISCLOSURE; DISPUTE RESOLUTION

8.1. The Bank and ADB agree that this Agreement will be made publicly available, and that any other information related to this Agreement in the Bank's possession, including information submitted to the Bank by ADB under this Agreement, may be made publicly available or disclosed by the Bank in accordance with its policies and procedures.

8.2. ADB and the Bank, in coordination with the Facility Executive Board, shall use their best efforts to amicably settle any dispute, controversy or claim arising out of or relating to this Agreement.

8.3. Nothing in this Agreement shall be considered a waiver of any privileges or immunities of the Bank or ADB under their respective constituent document, international convention or any applicable law, all of which are expressly reserved.

9. EFFECTIVENESS; AMENDMENT

9.1. This Agreement shall become effective on the date when the last of the Parties signs.

9.2. This Agreement may be amended at any time by the written agreement of the Bank and ADB.

9.3. This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

10. CLOSING DATE; TERMINATION

10.1. Unless otherwise agreed between the Parties, on the earlier of:

- (a) the Closing Date, which shall be July 31, 2021; and
- (b) the expiry of the notice period of a termination notice provided in accordance with paragraph 10.2 below;

and provided that all obligations of the Parties under this Agreement have been fully performed (including, for the avoidance of doubt, the return of investment income by ADB as contemplated under paragraph 3.3, the return of Unused Funds and gains from foreign exchange transactions by ADB in accordance with paragraph 4.5 and the fulfillment of ADB's reporting obligations pursuant to Section 6), this Agreement shall terminate.

10.2. At any time before the Closing Date, either Party may terminate this Agreement upon sixty (60) days' prior written notice to the other Party. Upon receipt of such a notice by either Party, ADB shall take all appropriate actions for winding up its affairs in relation to any outstanding financial rights and/or obligations incurred by ADB in an expeditious and reasonable manner. Subject to the preceding sentence, if there are outstanding financial rights and/or obligations incurred by ADB for the activities for which Trust Fund funds have been transferred by the Bank under this Agreement prior to the termination of this Agreement, the provisions of this Agreement shall continue to apply to any such Trust Fund funds transferred until the outstanding financial rights and/or obligations have been fully satisfied.

11. EXECUTION IN COUNTERPARTS

11.1 This Agreement may be executed in any number of counterparts, each of which when signed will constitute a duplicate original and all of which taken together shall constitute one and the same instrument.

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT AND
INTERNATIONAL DEVELOPMENT ASSOCIATION, as trustee of the Global Road Safety
Facility – Phase 3 Multi-Donor Trust Fund**

By: Guangzhe Chen

Date: 24-Apr-2020

Name: Guangzhe Chen

Title: Global Director, Transport Global Practice

ASIAN DEVELOPMENT BANK

By: 

Date: 24 Apr 2020

Name: TOMOYUKI KIMURA

Title: DIRECTOR GENERAL, STRATEG POLICY AND PARTNERSHIPS DEPT

Annex A
Form of Cash Transfer Request

[ADB's Letterhead]

[Date]

[Bank contact details]

Re: Disbursement Trust Fund No. _____ – Global Road Safety Facility – Phase 3
Multi-Donor Trust Fund – Asian Development Bank Transfer Agreement – Cash
Transfer Request

Dear Sir or Madam:

Reference is made to the Transfer Agreement between the International Bank for Reconstruction and Development and the International Development Association (the "Bank"), as trustee of the Global Road Safety Facility – Phase 3 Multi-Donor Trust Fund (TF No. 073163) (the "Trust Fund") and the Asian Development Bank, effective on _____ (the "Agreement").

Pursuant to Section 2 of the Agreement, ADB hereby requests the Bank to transfer US\$ _____ [amount of Funds] from the Trust Fund to ADB for ADB's use in accordance with the terms of the Agreement.

Bank Account Details for receipt of the funds:

Bank account name:
Bank account number:
Bank name:
Bank address:
Bank SWIFT code:
Routing instructions:

Sincerely,

ASIAN DEVELOPMENT BANK

[Name of Authorized Signatory]

[Title of Authorized Signatory]

Annex B
Form of Authorized Signatory Letter

[ADB's Letterhead]

[Date]

[Bank contact details]

Re: Disbursement Trust Fund No. _____ – Global Road Safety Facility – Phase 3
Multi-Donor Trust Fund – Asian Development Bank Transfer Agreement –
Authorized Signatory

Dear Sir or Madam:

Reference is made to the Transfer Agreement between the International Bank for Reconstruction and Development and the International Development Association, as trustee of the Global Road Safety Facility – Phase 3 Multi-Donor Trust Fund (the “Trust Fund”) and the Asian Development Bank (“ADB”), dated _____ (the “Agreement”). For the purposes of the Agreement, any one of the persons whose authenticated specimen signatures appear below is authorized on behalf of ADB to sign any request or report under the Agreement:

[Name], [Position] Specimen Signature: _____

[Name], [Position] Specimen Signature: _____

[Name], [Position] Specimen Signature: _____

Sincerely,

ASIAN DEVELOPMENT BANK

[Name of Authorized Signatory]

[Title of Authorized Signatory]