

**No. 7984**

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**UNITED STATES OF AMERICA  
and  
SAUDI ARABIA**

**Exchange of notes constituting an agreement relating to the  
construction of certain military facilities. Jidda,  
24 May and 5 June 1965**

*Official texts : English and Arabic.*

*Registered by the United States of America on 30 November 1965.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
ARABIE SAOUDITE**

**Échange de notes constituant un accord relatif à la cons-  
truction de certaines installations militaires. Djedda,  
24 mai et 5 juin 1965**

*Textes officiels anglais et arabe.*

*Enregistré par les États-Unis d'Amérique le 30 novembre 1965.*

No. 7984. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND SAUDI ARABIA RELATING TO THE CONSTRUCTION OF CERTAIN MILITARY FACILITIES. JIDDA, 24 MAY AND 5 JUNE 1965

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I

*The Saudi Arabian Deputy Minister of Foreign Affairs to the American Ambassador*

No. 92/9/3/1985/2

Excellency :

I have the pleasure to acknowledge receipt of your Excellency's note 418 dated November 15, 1964,<sup>2</sup> the text of which is amended to read as follows :

"Excellency :

"I have the honor to refer to recent discussions concerning plans of the Government of the Kingdom of Saudi Arabia to undertake construction of certain military facilities, and the services which the U.S. Army Corps of Engineers is prepared to render to aid completion of this program.

"I have been instructed by my Government to confirm that, pursuant to the request of the Saudi Government and subject to the provisions hereof, the United States Government shall provide complete engineering and construction management services for design, contracting and construction of certain facilities for the military forces of the Saudi Government. The U.S. Army Corps of Engineers (hereinafter referred to as the Corps) shall carry out these responsibilities on behalf of the United States Government. The Ministry of Defense shall carry out the equivalent responsibilities on behalf of the Saudi Government.

"The scope of each project authorized for design and construction shall be established by the Saudi Government. Criteria to which projects are to be designed and standards to which they are to be constructed shall also be established by the Saudi Government. The Corps will assist the Saudi Government in determining scope, criteria and standards of construction, but the final approval of and responsibility for such scope, criteria and standards shall be with the Saudi Government. The Corps shall be responsible for the engineering soundness and adequacy for the intended purpose of all design, and for quality of construc-

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<sup>1</sup> Came into force on 5 June 1965 by the exchange of the said notes, with retroactive effect as from 24 May 1965, in accordance with their provisions.

<sup>2</sup> Not printed by the Department of State of the United States of America.

tion of all facilities constructed by or under the supervision of the Corps from designs prepared by the Corps.

“The Division Engineer, U.S. Army Engineer Division, Mediterranean, Leghorn, Italy, or his authorized representatives, is hereby designated to act for the Corps in discharging its responsibilities hereunder. The Saudi Government will designate a liaison officer who will be the principal contact point between that Government and the Corps.

“In carrying out their responsibilities under this agreement, the Corps and the Saudi Government will be governed by the following :

#### “I. DESIGN

“A. The Corps will make a study of the feasibility and engineering requirements of the facilities desired in the location designated by the Saudi Government, such studies to be comprehensive in nature and covering access to the site, availability of suitable and adequate water and construction materials, climatic conditions, surface and subsurface conditions affecting layout. Construction criteria for design shall be established, and a preliminary master plan and layouts shall be prepared and submitted to the Saudi Government for approval prior to initiation of actual design.

“B. Upon receipt from the Saudi Government of authorization for design, the Corps shall proceed to accomplish design as expeditiously as possible. The Corps shall furnish the Saudi Government a schedule showing the anticipated completion dates of preliminary and final design for each authorized project. Final plans and specifications shall be approved by the Saudi Government prior to issuance of invitations to bid or requests for proposals for construction contracts. If requested, the Corps will submit preliminary plans and specifications to the Saudi Government for review and approval prior to commencement of final design.

“C. The Corps may elect to accomplish design with its own personnel or to utilize the services of architect-engineer firms under contract to the Corps. The Corps will submit the names of two or more firms, indicating its priority of rating to the Saudi Government. The Saudi Government will enjoy the right to choose the firm it prefers from the names submitted. The Corps will be responsible for negotiation of fees to be paid for engineering services, for execution and administration of architect-engineer contracts, for payments under the contracts, and for the quality of design accomplishment by architect-engineers under contract to the Corps. Architect-engineers shall receive instructions regarding work under their contracts only from the Contracting Officer of the Corps (hereinafter referred to as the Contracting Officer). During design phases, the Corps will establish an office in Saudi Arabia for supervision of field activities and liaison with the Saudi Government.

#### “II. CONSTRUCTION

“Upon receipt from the Saudi Government of approval of final plans and specifications, and upon receipt of authorization for construction by written communication addressed to the American Ambassador, and subject to the availability of funds, the Corps will, as expeditiously as possible, issue invitations to bid or requests for proposals for construction contracts.

“A. Prior to issuance of invitations to bid or requests for proposals the Corps shall submit to the Saudi Government a list of qualified construction contractors including Saudi contractors to whom it is proposed to issue invitations or requests. The list shall contain only the names of contractors who have been determined by the Corps to be qualified to accomplish the construction of the project in question, based upon previous performance on similar construction projects of comparable magnitude, their current organization and financial standing, and other factors having a bearing on their qualifications. The Saudi Government shall have the right to reject any contractor on the list submitted by the Corps. In addition it will be understood that the principal contractor shall submit to the Saudi Government a list of subcontractors and that the Saudi Government shall have the right to reject any of these.

“B. Bids or proposals from construction contractors will be opened by the Contracting Officer at a time and place designated by him. If the Saudi Government so desires, it may have a representative present at the opening. The Contracting Officer will make known to the representative of the Saudi Government the contents of all bids or proposals received, and will inform him of the Corps’ evaluation of bids or proposals and the name of the contractor to whom the Corps proposes to award the contract. Award of the contract will be made by the Contracting Officer. A copy of all construction contracts shall be furnished to the Saudi Government after award.

“C. The Corps shall be entirely responsible for the administration of all construction contracts awarded under the terms of this agreement, including verification of payment estimates submitted by the contractor, approving progress schedules, directing the contractor to take actions required to complete construction in accordance with approved schedules, making payments to the contractor, and taking any other action required to assure compliance by the contractor with the terms of the contract. The contractor shall be given instructions only by the Contracting Officer.

“D. The Corps shall have the right to issue change orders to construction contracts as required by field conditions, technical and engineering considerations, construction problems encountered, availability of materials or equipment, and other similar factors affecting the prosecution of the work under the terms of the contract. Change orders which change the authorized scope of the facilities being constructed will be issued only with the concurrence of the Saudi Government. The cumulative value of the contract and change orders shall not exceed the funds authorized and furnished by the Saudi Government. A copy of all modifications to construction contracts shall be furnished to the Saudi Government.

“E. The Corps shall establish an office in Saudi Arabia for the purpose of supervising and inspecting construction accomplished under the terms of this agreement. The Corps shall furnish a sufficient number of qualified engineers, technicians and other personnel to assure that the construction meets the criteria and standards established for the facilities being constructed, and that the terms of the contracts are being complied with by the construction contractors. Construction supervision and inspection may be performed by Corps personnel, or by personnel of architect-engineer firms under contract to the Corps. The Liaison Officer will follow construction of the work and will provide his observations to the Corps which will give them

due consideration. In either case the responsibility for the quality of construction and compliance with established criteria and standards shall rest with the Corps.

"F. The Corps shall furnish to the Saudi Government monthly reports showing the progress of construction of all facilities under contract, as related to approved progress schedules.

"G. Upon final completion of a facility under any construction contract, a joint inspection of the facilities shall be made by designated representatives of the Saudi Government, the Corps and the construction contractor. Upon certification by the Corps that the facility has been satisfactorily completed according to the terms of the contract, the completed construction will be accepted by the Saudi Government.

"H. When facilities have been completed, the Corps shall furnish to the Saudi Government final approved shop drawings, and other pertinent documents, and such information on maintenance and operation of the equipment as has been furnished by the construction contractor under the terms of the contract. After transfer of any completed construction the Corps shall furnish to the Saudi Government reproducible drawings showing the facilities "as-built".

### "III. FINANCING

"A. Prior to initiation of any activity under this agreement, the Corps will furnish to the Saudi Government an estimate of the costs to be incurred therefor by the Corps, exclusive of contract costs for design and construction. This estimate shall include anticipated cost of engineering studies, design by Corps personnel, supervision and inspection of construction activities, and training of designated personnel. The estimate shall cover fund requirements for a period of time (not less than semi-annual) which shall be agreed upon by the Corps and the Saudi Government. Upon receipt and approval of the estimate by the Saudi Government, the required funds shall be deposited to the credit of the Corps by the Saudi Government. Estimates for subsequent periods shall be submitted in time to permit the Saudi Government to fund the requirements to the Corps so as to prevent interruption of the program because of lack of funds.

"B. Prior to advertising for bids or requesting proposals for design or construction of any facility the Corps shall furnish the Saudi Government an estimate of the funds required for the contract(s), plus a reasonable contingency for change orders during the life of the contract. This estimate shall be furnished as early during the design stages of the project as a reasonable estimate can be developed, and shall constitute the basis for funding by the Saudi Government to the Corps. The Corps will not issue any invitations to bid or requests for proposals for any contract(s) until the required funds, including the contingency for change orders, as indicated by a cost estimate based upon completed plans and specifications, have been transferred to the Corps by the Saudi Government.

"C. The Saudi Government shall deposit in U.S. dollars in the Chase Manhattan Bank New York to the account of the Finance and Accounting Officer, U.S. Army Engineer Division, Mediterranean, in the form of an irrevocable letter of credit, all funds furnished by the Saudi Government for the accomplishment of the work under

this agreement. Any unexpended funds remaining upon final completion of the project for which they were furnished shall be returned to the Saudi Government by the Corps.

"D. The Corps shall establish and maintain records of receipts and expenditures of all funds furnished by the Saudi Government. Records shall be maintained in such detail and in a format that will permit identification of the source of all funds and the purpose of all expenditures. The Corps shall report to the Saudi Government monthly, or at such less frequent intervals as may be mutually agreed upon, the status of all funds furnished by the Saudi Government.

#### "IV. RIGHTS OF ENTRY

"The Saudi Government shall acquire and make available to the Corps all rights of entry to and real estate for construction sites and sources of sand, gravel and other natural construction materials required for approved projects. The Corps will assure that the areas agreed upon are used only for work carried out under this agreement and shall not cause any destruction or damages, except through normal usage, without the concurrence of the Saudi Government. Relocation and resettlement of facilities located on real property required by and approved for use for a military facility being constructed under this agreement shall be accomplished by the Saudi Government in time so as not to interfere with orderly and economical prosecution of the work.

#### "V. CONTRACT DISPUTES

"The Chief of Engineers of the U.S. Army Corps of Engineers, acting through the U.S. Army Corps of Engineers' Board of Contract Appeals, shall hear and decide appeals taken pursuant to the "Disputes" clause of contracts awarded non-Saudi contractors pursuant to this agreement. The Saudi Government agrees to make such additional funds available as may be necessary to cover the payment of successful claims.

#### "VI. TRAINING

"The Corps will provide on the job training for personnel designated by the Saudi Government capable of benefiting from such training as evidenced by their aptitude, experience and education. Training shall consist of opportunities to learn by association with qualified, technical and professional personnel and by participation in Corps activities. Expenses incurred by personnel designated for training shall be borne by the Saudi Government separately from funds provided the Corps for design and construction activities under this Agreement. The Corps may approve personnel designated by the Saudi Government to receive training in programming, planning, design and contract administration at headquarters of the U.S. Army Engineer Division, Mediterranean located in Livorno, Italy. Such training assignments will not necessarily be solely concerned with activity on the projects accomplished for the Saudi Government under this agreement. Training opportunities in Saudi Arabia may include training in preliminary design studies, construction supervision and inspection, testing and control of construction materials and other related con-

struction activities, involving assignment to actual construction sites and to the Corps of Engineers offices in Saudi Arabia.

“VII. STATUS OF CORPS OF ENGINEERS PERSONNEL

“A. Members of the Corps and their dependents shall respect the laws of Saudi Arabia, including those laws prohibiting access to certain areas of the country to non-Muslims or to non-Saudis. The senior representative of the Corps element in Saudi Arabia shall have the sole authority to maintain discipline and good order among the members of the Corps and their dependents and to assure their full respect for the laws of Saudi Arabia by taking appropriate action under United States law in cases involving such persons. The authorities of Saudi Arabia shall promptly notify the senior representative of the Corps of the arrest of any member of the Corps or dependent accused of violating the laws of Saudi Arabia and shall transfer custody of the accused, as expeditiously as circumstances permit, to the senior representative of the Corps or his designated representative for appropriate action under the laws of the United States.

“B. Members of the Corps and their dependents shall enjoy within Saudi Arabia immunity from civil process for actions taken in the performance of their duties under this agreement.

“C. All property, material, equipment, services and supplies brought into or procured in Saudi Arabia by the Corps to carry out the functions contemplated by this Agreement shall be exempt from import and export duties, taxes, licenses, excises, impost, bonds, deposits and any other charges, except for services requested and rendered, and shall be exempt from inspections, except for identification. Property, materials, equipment, services and supplies belonging to the Corps and/or its non-Saudi contractors that do not become a part of the completed works shall remain the property of the Corps and/or its non-Saudi contractors, and may at any time be removed from or disposed of in Saudi Arabia free of any restrictions or any claims which may arise by virtue of such removal or disposal, provided that the duty thereon shall be paid in the event of their sale or disposal in Saudi Arabia. The Saudi Government shall take all reasonable steps, within the framework of its laws, to prevent unreasonable increases in prices of either materials or services, including transportation and fees for port unloading facilities, purchased by the Corps and/or its contractors to carry out the functions contemplated by the Agreement. The Saudi Government for its part shall accord the Corps, its premises and its equipment (including means of transportation), freedom from search or seizure except with the concurrence of the senior representative of the Corps in Saudi Arabia or his designated representative.

“D. The Saudi Government shall accord to members of the Corps, their dependents and their personal property, exemption from all kinds of taxes or charges imposed within Saudi Arabia. Goods imported under this exemption shall not ordinarily be sold or disposed of in Saudi Arabia, and in the event of such sale or disposal, the duty thereon shall duly be paid.

“E. The Saudi Government shall issue entry visas according to its laws and will facilitate entry into or exit from Saudi Arabia for persons employed by the Corps and its non-Saudi contractors for the performance of work under this agreement.

"F. Claims for compensation for damages arising out of acts of members of the Corps, except claims by or on behalf of members of the Corps or their dependents, will be presented through a designated official of the Saudi Arabian Government, who shall satisfy himself as to the validity of the claim, to a designated official of the Corps for consideration. Any claims which cannot be satisfactorily resolved in this manner will be referred to the Saudi Arabian Minister of Defense and Aviation and the senior representative of the Corps for further consideration. In the event that this consideration does not result in agreement, the matter will be referred to diplomatic representatives.

"Neither the United States Government nor members of the Corps shall be held liable for damage, loss, or destruction of property or for injury or death incident to any Saudi Arabian military program or training proposed, advised or participated in by the Corps or its members.

"G. The Corps and its contractors shall be permitted to operate a radio communication system within Saudi Arabia for communicating between offices and job sites on frequencies to be assigned by the Saudi Government.

"H. The Corps and its contractors shall be permitted to operate aircraft on flights into and out of Saudi Arabia as required for the work to be accomplished under this Agreement, such flights to be undertaken in accordance with aircraft regulations of the Saudi Government.

#### "VIII. PERSONAL SERVICES BY SAUDI NATIONALS

"Saudi personnel required by the Corps in the accomplishment of this Agreement will be selected by the Corps and hired and paid by the Saudi Government. The costs of these personal services will be included within the Corps' cost estimates submitted to the Saudi Government but will be excluded from the funds transferred to the Corps. Such personnel may include drivers, lab technicians, construction inspectors, clerks, etc.

#### "IX. TERMINATION

"The Saudi Arabian and U.S. Governments will consult upon the request of either of them, regarding any matter relating to the terms of this Agreement, and will endeavor jointly in the spirit of cooperation and mutual trust to resolve any difficulties or any misunderstandings that may arise. When it appears that all designated projects are nearing completion, or in case of a change of circumstances making it necessary or desirable to terminate the arrangements agreed to herein before the expiration date in the following paragraph, either government may give 60 days notice in writing of its intent to terminate. Thereafter, the Saudi Arabian and U.S. Governments shall consult together with the aim of fixing a mutually satisfactory termination date. Such date should, insofar as possible, be fixed sufficiently in advance so that the Corps may make personnel and other adjustments in their operation in light of such termination. In the event of termination pursuant to this clause, it is understood and agreed that this Agreement shall continue in force and effect beyond the specified termination date if necessary for the purpose of settling contract termination or other claims and costs.



“This Agreement shall continue in force and effect until six years following its coming into effect, except that it shall continue in force and effect beyond six years if necessary for the purpose of closing out all contracts awarded pursuant to the Agreement, including claims which might arise thereunder. Otherwise, the Agreement shall be subject to extension if mutually agreed by the Saudi and U.S. Governments.

“I have the honor to inform Your Excellency that, if the foregoing conditions are acceptable to the Saudi Arabian Government, the Government of the United States of America will consider this note, together with your note in reply concurring with the above, as constituting an Agreement between the two Governments with respect to this matter, such Agreement to enter into force on the date of your note in reply.

“I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.”

In accordance with the proposal made in Your Excellency's note, the Government of Saudi Arabia will upon receipt of your acknowledgement consider that the foregoing paragraphs constitute an agreement between our two governments and binding to all parties concerned.

Please, Excellency, accept my highest consideration.

Jedda, Muharam 24, 1385  
May 24, 1965

Omar SAQQAF

H.E. Mr. Parker T. Hart  
Ambassador of the United States of America

## II

*The American Chargé d'Affaires ad interim to the Saudi Arabian Deputy Minister  
of Foreign Affairs*

No. 896

Excellency :

I have the honor to acknowledge receipt of Your Excellency's Note dated May 24, 1965, addressed to Ambassador Parker T. Hart and setting forth the texts, both in Arabic and in English, of the Agreement on Military Construction to be concluded between our two governments.

I have the honor to inform Your Excellency that the United States Government regards this agreement as taking effect as of May 24, 1965, with the terms as set forth in your aforementioned notes in English and Arabic.

Please accept, Excellency, the assurances of my highest consideration.

Nicholas G. THACHER  
Chargé d'Affaires ad interim

His Excellency Sayyid Omar Saqqaf  
Deputy Minister of Foreign Affairs  
Jidda

Embassy of the United States of America  
Jidda, June 5, 1965