Definitive Egyptian Concession for Construction of the Suez Maritime Canal, Alexandria, January 5, 1856.[2]

Act of Concession of the Viceroy of Egypt, and Terms and Conditions for the Construction and Operation of the Suez Maritime Canal and Appurtenances

Alexandria, January 5, 1856

We, Mohammed Said Pasha, Viceroy of Egypt.

In view of our Act of Concession dated November 30, 1854, by which we gave to our friend, Mr. Ferdinand de Lesseps, exclusive power for the purpose of establishing and directing a universal company to cut through the Isthmus of Suez, to operate a passage suitable for large vessels, to establish or adapt two adequate entrances, one on the Mediterranean, the other on the Red Sea, and to establish one or two ports:

Mr. Ferdinand de Lesseps having represented to us that, in order to establish the aforementioned company in the form and under the conditions generally adopted for companies of this nature, it is desirable to stipulate in advance, in a more detailed and more complete act, on the one hand, the responsibilities, obligations, and charges to which such company will be subject and, on the other hand, the concessions, immunities, and advantages to which it shall be entitled, as well as the facilities that will be granted to it for its administration.

We have laid down as follows the conditions for the concession which forms the subject of these presents.

Obligations

Art. I. The company founded by our friend, Mr. Ferdinand de Lesseps, by virtue of our grant of November 30, 1854, must execute at its own expense, risk, and peril, all work, including construction, necessary for the establishment of:

(1) A canal for large seagoing vessels, between Suez on the Red Sea and the Bay of Pelusium in the Mediterranean Sea;

(2) An irrigation canal also suitable for use by Nile shipping, connecting the river with the maritime canal above-mentioned;

(3) Two irrigation and feeder branches leading off from the above-mentioned canal and flowing in the two directions of Suez and Pelusium.

The work will be carried out so as to be finished within a period of six years, except in the event of hindrances and delays resulting from *force majeure*.

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[2] Translation by the Department of State from the French text in *British and Foreign State Papers, 1864–1865*, vol. 55 (1870) pp. 976–981.

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II. The company shall be empowered to carry out the work with which it is charged by itself under State supervision or to cause it to be carried out by contractors through competitive bids or on an agreed-price basis. In all cases at least four-fifths of the workmen employed in this work are to be Egyptians.

III. The canal suitable for large seagoing vessels shall be dug to the depth and width fixed by the program of the International Scientific Commission.

In conformity with this program it shall start from the port of Suez itself; it shall use the basin known as the Bitter Lakes Basin and Lake Timsa; it shall have its outlet in the Mediterranean, at a point on the Bay of Pelusium to be determined in the final plans to be drawn up by the company's engineers.

IV. The irrigation canal suitable for river shipping under the conditions of the said program shall begin near the city of Cairo, follow the valley (wadi) of Tumilat (ancient land of Goshen) and meet the large maritime canal at Lake Timsa.

V. The branches of the said canal are to lead off from it above the outlet into Lake Timsa; from that point they will be made to flow in the one case toward Suez and in the other case toward Pelusium, parallel to the large maritime canal.

VI. Lake Timsa will be converted into an inland port capable of receiving vessels of the largest tonnage.

The company will be bound, moreover, if necessary: (1) to construct a harbor at the point where the maritime canal enters the Bay of Pelusium; (2) to improve the port and roadstead of Suez, so as also to afford shelter to vessels there.

VII. The maritime canal and ports belonging to it, as well as the canal connecting with the Nile and the lead-off canal, shall at all times be kept in good condition by the company, at its expense.

VIII. Owners of riparian property wishing their land to be irrigated by water from the canals constructed by the company may obtain permission from it for this purpose through payment of compensation or a fee the amount of which shall be fixed by the conditions of Art. XVII hereinafter mentioned.

IX. We reserve the right to appoint at the administrative headquarters of the company a special commissioner, whose salary shall be paid by it, and who will represent with its administration the rights and interests of the Egyptian Government for the execution of the provisions of these presents.

If the company's administrative headquarters is established elsewhere than in Egypt, the company shall have itself represented at Alexandria by a superior agent vested with all powers necessary to

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see to the proper functioning of the service and the company's relations with our government.

CONCESSIONS

X. In return for the construction of the canals and appurtenances mentioned in the foregoing articles, the Egyptian Government allows the company, without tax or fee, to enjoy the use of all such land, not belonging to private parties, as may be necessary.

It also allows it to enjoy the use of all now uncultivated land not belonging to private parties, which will be irrigated and cultivated by its efforts and at its expense, with this difference: (1) That the portions of land included in this last category shall be exempt from all taxes for ten years only, dating from their connection with the undertaking; (2) That after that period, and until the expiration of the concession, they shall be subject to the obligations and taxes to which the land of the other Egyptian provinces is subject under the same circumstances; (3) That the company can, subsequently, acting itself or through its assigns, retain the right to enjoy possession of this land and of the water-supply facilities necessary for its fertilization, subject to payment to the Egyptian Government of the taxes levied upon land under the same conditions.

XI. To determine the extent and limits of the land granted to the company, under the conditions of (1) and (2) of Article X above, reference is made to the plans annexed hereto,[3] it being understood that on the said plans the lands granted for the construction of the canals and appurtenances free of tax or fee in conformity with (1) are shown in black, and the lands granted for cultivation through payment of certain fees in conformity with (2) are shown in blue.

All acts executed subsequent to our act of November 30, 1854 shall be considered null and void if they would result in creating for private parties as against the company either rights to compensation which did not exist at the time with respect to those lands, or rights to compensation that are more extensive than those which they were able to claim at that time.

XII. The Egyptian Government will make over to the company, if desirable, privately-owned land the possession of which may be necessary to the execution of the work and the exploitation of the concession, provided the company pay fair compensation to the owners.

Compensation for temporary occupation or for definitive expropriation shall be settled amicably in so far as possible; in case of disagreement, it shall be fixed by a court of arbitration acting in summary proceedings and composed of: (1) an arbitrator chosen by the com-

[3] Not printed here.

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pany; (2) an arbitrator chosen by the interested parties, and (3) a third arbitrator appointed by us.

The decisions of the court of arbitration shall become executory immediately and shall not be subject to appeal.

XIII. The Egyptian Government grants the concessionary company, for the entire life of the concession, the right to extract from mines and quarries belonging to the public domain, without payment of any fee, tax, or compensation, all materials necessary for the work of constructing and maintaining the installations and establishments belonging to the company.

Furthermore, it exempts the company from all customs, entry, and other duties on the importation into Egypt of all machinery and material of any kind that it may bring in from abroad for the needs of its various services during construction or operation.

XIV. We solemnly declare, for ourselves and our successors, subject to ratification by His Imperial Majesty the Sultan, that the great maritime canal from Suez to Pelusium and the ports belonging to it shall be open forever, as neutral passages, to every merchant vessel crossing from one sea to the other, without any distinction, exclusion, or preference with respect to persons or nationalities, in consideration of the payment of the fees, and compliance with the regulations established by the universal company, the concession-holder, for the use of the said canal and its appurtenances.

XV. In consequence of the principle laid down in the foregoing article, the universal company holding the concession may not, in any case, give to any vessel, company, or private party any advantage or favor not given to all other vessels, companies, or private parties on the same terms.

XVI. The life of the company is fixed at 99 years, counting from the completion of the work and the opening of the maritime canal to large vessels.

At the expiration of that period, the Egyptian Government will resume possession of the maritime canal constructed by the company, and it shall be its responsibility, in this case, to take over all materials and supplies used in the company's maritime service and, in return, to pay the company the value to be fixed, either by amicable agreement or on the basis of an opinion of experts.

Nevertheless, should the company retain the concession for successive periods of 99 years, the levy for the benefit of the Egyptian Government stipulated in Article XVIII below shall be increased for the second period to 20 percent, for the third period to 25 percent, and so on, at the rate of 5 percent for each period; but such levy shall, however, never exceed 35 percent of the net profits of the company.

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XVII. In order to compensate the company for the expenses of construction, maintenance, and operation for which it is made responsible by these presents, we authorize it, henceforth and for its entire term of possession, as specified in paragraphs 1 and 3 of the foregoing article, to establish and collect, for passage in the canals and the ports belonging thereto, navigation, pilotage, towage, and anchorage fees, according to rate-schedules which it may change at any time, subject to the express condition that it shall:

(1) Collect these fees without exception or favor from all vessels, under the same terms

(2) Publish the rate-schedules three months before they become effective, in the capitals and principal commercial ports of the countries concerned

(3) Not exceed for the special navigation fee the maximum figure of ten francs per ton of burden for vessels and ten francs a head for passengers.

The company may, also, for all water-supply facilities granted at the request of private parties, by virtue of Article VIII above, collect, according to rate-schedules which it will fix, a fee proportionate to the quantity of water used and the area of the land irrigated.

XVIII. At the same time, in view of the land grants and other advantages accorded the company in the foregoing articles, we shall make, for the benefit of the Egyptian Government, a levy of 15 percent of the net profits for each year as determined and apportioned at the general meeting of shareholders.

XIX. The list of charter members who contributed by their work, their studies, and their capital to the accomplishment of the undertaking, before the founding of the company, shall be prepared by us.

After deduction of the amount levied for the Egyptian Government stipulated in Article XVIII above, 10 percent of the annual net profits of the enterprise is to be allotted to the charter members or their heirs or assigns.

XX. Independently of the time necessary for the execution of the work, our friend and representative, Mr. Ferdinand de Lesseps, will preside over and direct the company as first founder for ten years from the time when the period of the enjoyment of the 99-year concession begins, under the terms of article XVI above.

XXI. The articles of incorporation of the company thus created under the name of Universal Company of the Maritime Canal of Suez are hereby approved; this approval constitutes authorization for establishment in the form of a corporation, effective on the date on which the capital of the company shall have been subscribed in full.

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XXII. In token of the interest we attach to the success of the enterprise, we promise the company the loyal cooperation of the Egyptian Government and by these presents expressly request the officials and agents of all the departments of our Government to accord it assistance and protection under all circumstances.

Our engineers, Linant Bey and Mougel Bey, whom we place at the company's disposal for the direction and management of the work laid out by it, shall be in charge of the supervision of the workers and shall be responsible for enforcement of the regulations for putting the work programs into operation.

XXIII. All provisions of our *ordonnance* of November 30, 1854 are hereby revoked, together with any others which may be in conflict with the clauses and terms of the present articles and conditions, which alone shall govern the concession to which they apply.

Done at Alexandria, January 5, 1856.

To my loyal friend of high birth and high rank, Mr. Ferdinand de Lesseps:

Since the concession granted to the Universal Company of the Canal of Suez must be approved by His Imperial Majesty the Sultan, I am transmitting to you this authentic copy so that you may establish the said financial company.

As for the work connected with cutting through the Isthmus, the company may carry it out itself as soon as the authorization of the Sublime Porte is granted to me.

Alexandria, Rebi-ul-Akher 26, 1272 (January 5, 1856).

O. Seal of His Highness the Viceroy.

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