

BEFORE THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY

In re: City of Vicksburg
819 South Street
Vicksburg, MS 39181

Agreement Order No. _____

BROWNFIELD AGREEMENT ORDER

Pursuant to the Mississippi Brownfield Voluntary Cleanup and Redevelopment Act ("Act") created in Miss. Code Ann. § 49-35-1, et seq., the Mississippi Commission on Environmental Quality ("MCEQ"), and the City of Vicksburg ("Brownfield Party") agree as follows:

1. The Brownfield Party has an interest in a parcel of land located at 1422 Martin Luther King Jr. Blvd. in Vicksburg, Mississippi on the site known as the former Kuhn Memorial Hospital (AI#9058). The administrative record for the environmental response project is referred to as Kuhn Hospital Site ("Site"), Vicksburg, Warren County Mississippi, File (AI-9058) and is located at the main office of the Mississippi Department of Environmental Quality in Jackson, Mississippi. A legal description and survey plat are included in Exhibit A of this Brownfield Agreement Order. The proposed use of the Brownfield Agreement Site after completion of all remediation will be commercial, residential, or green space in nature.
2. The Brownfield Agreement Site is contaminated with asbestos containing materials (ACM), and, therefore, remediation of the Brownfield Agreement Site is necessary.
3. The staff of the MCEQ has evaluated the Brownfield Agreement and believes that, with the conditions and restrictions contained within the Brownfield Agreement, the Site will be in compliance with all applicable State and Federal laws and standards and will be protective of the public health and the environment once the Brownfield Agreement is completed.
4. The following is a description of all remediation requirements and/or continuing obligations to be conducted for the Brownfield Agreement Site:
 - (a) All required corrective action shall be completed as described in the MDEQ-approved Corrective Action Plan dated January 23, 2018, unless otherwise approved in writing by MDEQ.
 - (b) The Brownfield Party shall implement any additional corrective action necessary to remain in compliance with this Agreed Order, unless otherwise approved in writing by MDEQ.

- (c) The Brownfield Party shall have a financial mechanism in place to pay for all MDEQ costs related to ensuring compliance with this Brownfield Agreement Order until the Executive Director issues a “no further action” letter under Miss. Code Ann. § 49-35-15.
 - (d) The Brownfield Party shall provide written notice to MDEQ at least thirty (30) days prior to any change in use at the site that increases the probability of exposure to contaminants at the Site for as long as the Brownfield Party has an interest in the Site.
 - (e) The Brownfield Party shall not change the use of any portion of the Site that increases the probability of exposure to contaminants without written approval from the MDEQ for as long as the Brownfield Party has an interest in the Site.
 - (f) The Brownfield Party shall provide written notice to MDEQ prior to any conveyance of an interest involving the Site or any portion of the Site for as long as the Brownfield Party has an interest in the Site.
 - (g) The Brownfield Party shall provide a copy of this Brownfield Agreement Order for the Site to any party interested in purchasing the Site or any portion of the Site from the Brownfield Party prior to any property transaction involving the Site or any portion of the Site.
 - (h) Within fifteen (15) days after execution of this Brownfield Agreement, the Brownfield Party shall file a certified copy of this Brownfield Agreement and the Notice of Brownfield Agreement in the office of the Warren County Chancery Clerk.
 - (i) Within forty-five (45) days after execution of this Agreement, the Brownfield Party shall submit to MDEQ certification signed by the Warren County Chancery Clerk that the requirements under paragraph 4(h) of this Agreement have been completed.
5. Until the Executive Director issues a “no further action” letter under Section 49-35-15, approval from the MCEQ shall be required for any sale, conveyance or other change in surface ownership of any portion of the Brownfield Agreement Site owned by the Brownfield Party desiring to make the change in ownership, if the new surface owner will perform any continuing obligations listed in #4 above.
6. The Brownfield Party and the new surface owner jointly shall provide information satisfactory to the MCEQ at such time that the new surface owner has the financial, managerial, and technical resources to complete performance of the Brownfield Agreement obligations to be transferred and that the new surface owner agrees to complete this performance. If the MCEQ determines that the new surface owner has the financial, managerial, and technical resources to complete this performance and has agreed to do so, the MCEQ shall issue an order approving the transfer of those Brownfield Agreement continuing obligations.

7. The schedule for administration of this Agreement by MDEQ is that within thirty (30) days of receiving certification from the Brownfield Party that the provisions of this Brownfield Agreement have been met, MDEQ shall review the certification to determine if all information is sufficient and accurate. MDEQ shall issue a letter noting any deficiencies and/or inaccuracies.
8. This Agreement may be modified by Order of MCEQ in accordance with Rule 2.1.6(A) of 11 Miss. Admin Code Pt. 3, Ch. 2 of the Final Brownfield Regulations, as amended.
9. A material failure of a Brownfield Party or the agents or employees of a Brownfield Party to comply with this Agreement constitutes a violation of Miss. Code Ann. § 49-35-13 by the Brownfield Party. If a Brownfield Party violates Miss. Code Ann. § 49-35-13, the MCEQ shall issue an order requiring the Brownfield Party to correct the violation in an appropriate time period established by the Order. If the Brownfield Party fails to comply with an order under Miss. Code Ann. § 49-35-13, the Brownfield Party shall be subject to removal of all liability protection afforded by the Agreement under Miss. Code Ann. § 49-35-15 and shall be subject to civil penalties under Miss. Code Ann. § 49-17-43.
10. Upon execution of this Agreement, the Brownfield Party shall be relieved of liability to all persons other than the United States for: (a) remediation of the Brownfield Agreement Site other than the remediation required by this Agreement; and (b) all costs reasonably related to the remediation other than the remediation and costs required by the Agreement or this Act. It is understood and agreed that this Agreement shall not affect the right of any person to seek relief against any Parties to the Agreement who may have liability with respect to the Brownfield Agreement Site, except as provided in this paragraph.
11. The liability protection provided under paragraph 10 applies to the following persons to the same extent as to a Brownfield Party:
 - (a) Any person under the direction or control of the Brownfield Party who directs or contracts for remediation or redevelopment of the Brownfield Agreement Site;
 - (b) Any current owner and any future owner of the Brownfield Agreement Site;
 - (c) Any person who develops, redevelops or lawfully occupies the Brownfield Agreement Site;
 - (d) Any successor or assign of any person to whom the liability protection provided under this section applies; and
 - (e) Any lender or fiduciary that provided financing for remediation or redevelopment of the Brownfield Agreement Site.

12. The liability protection provided by paragraph 10 shall remain effective, unless the MCEQ removes the liability protection for failure of the Brownfield Party to comply with a Commission Order requiring the Brownfield Party to correct violation(s) of the Brownfield Agreement.
13. The Brownfield Party agrees to state in any deed or other instrument conveying an interest in brownfield property or in any contract for the purchase of brownfield property that the property is brownfield property and subject to a Brownfield Agreement unless the Notice of Brownfield Agreement Site has been canceled.
14. Nothing in the Brownfield Agreement shall be construed to convey or determine any interest in property.
15. Nothing in the Brownfield Agreement shall be construed to be an allocation of costs or an indemnification by the State, MDEQ, and/or MCEQ.
16. The Brownfield Party understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Section 49-17-31, and that it has made an informed waiver of that right.

So ORDERED and AGREED, this the _____ day of _____, 2018.

Gary C. Rikard
Executive Director
Mississippi Commission on
Environmental Quality

AGREED, this the _____ day of _____, 2018.

BY: _____
Mayor, City of Vicksburg

STATE OF MISSISSIPPI

COUNTY OF WARREN

PERSONALLY appeared before me, the undersigned authority in and for the said county/parish and state, on this the _____ day of _____, 2018, within my jurisdiction, the within named George Flaggs, Jr., who acknowledged that he is the Mayor of the City of Vicksburg, and that in said representative capacity he executed the above and foregoing instrument after first having been duly authorized so to do.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

EXHIBIT A – Legal Description & Survey Plat



[INSERT SURVEY PLAT]

