



**The Middleby Corporation  
Formerly known as Viking Range Corporation  
Project Report**

The purpose of the audit was to verify compliance with the Memorandum of Understanding (MOU) and the amendments to the MOU, between the Mississippi Development Authority (MDA) and Viking Range Corporation (Viking) located in Greenwood, Mississippi (Leflore County), which was purchased by the Middleby Corporation (Middleby) in December, 2012. The original MOU, dated July 26, 2005, was for the issuance of a grant from the Mississippi Major Economic Impact Act (MMEIA) program administered by MDA in an amount totaling \$3 million (authorized under SB 2010, 2004 3<sup>rd</sup> Extraordinary Session). In this agreement, Viking initially agreed to create an additional 250 new full-time direct jobs on or before May 1, 2008, which was to be an addition to their warranted employment figure of 1,148 as of the effective date of the MOU. The company also agreed to make a \$10 million capital investment from any source or combination of sources in the dishwasher manufacturing facility by May 1, 2008.

***During the 2011 audit, OSA found Viking did meet its obligations (MOU, Article III, Section 3.5) to invest \$10 million in the Project no later than May 1, 2008. Viking made a capital investment in the project of approximately \$15.4 million dollars.***

OSA did not conduct an audit of Viking until September 20, 2011 (*A Review of the Number of Employees at Viking Range Corporation - Management Letter #13*). This was because the company was not able to create and/or maintain 250 new full-time direct jobs as required in the original MOU. Amendments to the MOU extended the measurement dates first, to May 1, 2011, and then to May 1, 2015, (Chart 1). This gave the company seven (7) years to meet its obligation to create an additional 250 new full-time direct jobs, which were required in addition to the base 1,148 employees.

**Chart 1**

Document	MOU Date	Measurement Date	Maintain Until
Original MOU	July 26, 2005	May 1, 2008	May 1, 2013
1 <sup>st</sup> Amendment	April 6, 2009	May 1, 2011	May 1, 2016
2 <sup>nd</sup> Amendment	February 6, 2012	May 1, 2015	May 1, 2020

In the original MOU, Viking warranted it directly employed 1,148 (Article III, Section 3.2) full-time employees in Mississippi as of July 26, 2005.

***OSA was unable to determine if Viking directly employed 1,148 full-time persons at the signing of the original MOU and there was no evidence the MDA verified this number prior to the original MOU signing. In the future, OSA recommends MDA verify all prior base employment information and records that pertain to the MOU before contracts are signed.***

In May 2008, Viking certified it had defaulted on the statutory job creation requirement and failed to create 130 of the 250 new full-time direct jobs by May 1, 2008, and had to repay the State \$312,000. Viking was imposed a penalty per the original MOU Article I, Section 4.1 and made payment in full to MDA in January, 2009. The penalty calculation for not meeting the job requirement by May 1, 2008, was as follows:

$$\text{\$3 million (bond issued) / 5 (years maintenance)} = \text{\$600,000 / 250 (new full-time jobs to create)} = \text{\$2,400 (per job cost) x 130 (the number of jobs the company fell short)} = \text{\$312,000 (paid 2008 penalty in January 2009).}$$

In 2011, Viking once again defaulted on the statutory job creation requirement and failed to create 165 of the 250 new full-time direct jobs and only created 85 new full-time direct jobs to the Project. At the time of the audit, no certification of compliance had been provided to MDA from Viking for the May 1, 2011, obligation stated in the First Addendum to the MOU dated April 6, 2009, (Article III). OSA's procedures verified Viking directly employed 644 employees as of the date of the audit (September 20, 2011). The penalty calculation for not meeting the job requirement by May 1, 2011, was as follows:

$$\text{\$3 million (bond/grant issued) / 5 (years maintenance)} = \text{\$600,000 / 250 (new full-time jobs to create)} = \text{\$2,400 (per job cost) x 165 (the number of jobs the company fell short)} = \text{\$396,000 (final payment was made in December 2014).}$$

Payments totaling \$33,000 were made quarterly over three (3) years being due on March 1st, June 1st, September 1st, and December 1<sup>st</sup>, annually.

At the start of the audit, OSA noted that Viking had once again defaulted on the statutory job creation agreement and failed to create 250 new full-time direct jobs by May 1, 2015. The penalty calculation for not meeting the job requirement by May 1, 2015, was as follows:

$$\text{\$3 million (bond/grant issued) / 5 (years maintenance)} = \text{\$600,000 / 250 (new full-time jobs to create)} = \text{\$2,400 (per job cost) x 250 (the number of jobs the company fail short)} = \text{\$600,000 (paid December 2015).}$$

For the failure to maintain jobs, on May 1, 2016, and May 1, 2017, MDA issued a request for default payment letter to Middleby for **\$1.2 million**, which was paid July, 2017. Chart 2 indicates the total amount Middleby/Viking Range has repaid to the State for the failure to create and/or maintain jobs per the Original MOU (Article III, Section.3), the First Addendum to the MOU (Article III), and Second Addendum to the MOU (Article III).

**Chart 2**

Measurement/ Maintenance Dates	Total jobs not created and/or maintained	Total Jobs Created	Default Penalty
May 1, 2008	130	120	\$312,000
May 1, 2011	165	85	\$396,000
May 1, 2015	250	0	\$600,000
May 1, 2016	250	0	\$600,000
May 1, 2017	250	0	\$600,000
<b>Total Payments</b>			<b>\$2,508,000</b>

During the 2015 Regular Legislative Session (RLS) – SB 2906, the Legislature authorized a \$5 million bond issuance to Middleby, a manufacturer of a high-end kitchen appliances, through the ACE Fund (MS Code §57-1-16) that would assist in paying the costs of equipment upgrades at its refrigeration manufacturing facility. However, during the 2016 RLS, HB 1729 amended MS Code §57-1-221, which required the \$5 million to be issued under the Industry Incentive Finance Revolving Fund (MIIRF) instead of the ACE Fund; which states:

*An ...approved business enterprise means any project that is... a manufacturer of high-end kitchen appliances having at least four hundred (400) employees working at its Mississippi facilities on January 1, 2015, and with a capital investment of at least Five Million Dollars (\$5,000,000.00) made after July 1, 2014, through four (4) years after July 1, 2015, that expands in this state, and retains a minimum of four hundred (400) jobs...*

This modification in the funding source lowered the capital investment requirements from \$20 million (per HB 2906 – 2015 RLS) to \$5 million (HB 1729 - 2016 RLS). As of June, 2017, MDA has issued approximately \$2.3 million to Middleby from the MIIRF for the purpose of purchasing equipment and site improvements at its Leflore County, “Mississippi Facilities” (Chart 3).

**Chart 3**

Mississippi Facilities	Total Employees
Viking Range, LLC	366
Viking Cooking School, LLC	4
The Alluvian Hotel, LLC	18
The Alluvian Spa, LLC	3
<b>Total</b>	<b>391</b>

On July 28, 2017, MDA issued a “Letter of the Default” in the amount of \$13,300.17 (paid August 2017) to Middleby informing them of their default of the job maintenance agreement (Item 4B of the Annex A). OSA was not provided with certification of jobs figures; nevertheless, MDA did provide documentation to indicate Middleby had 391 full-time jobs at its “Mississippi Facilities.” Although the law states that the company would maintain 400 jobs at its “Mississippi Facilities,” the refrigeration manufacturing facility only employed 366 full-time employees.

In conclusion, Viking entered into an agreement with the State of Mississippi and the Mississippi Development Authority and failed several times to meet the obligations. These obligations were clearly stated in the original MMEIA’s Memorandum of Understanding, First Addendum of the MOU, and the Second Addendum of the MOU to create and/or maintain 250 new full-time direct jobs in addition to the base employment of 1,148 at the Project site located in Greenwood, Mississippi. This agreement required the company to maintain approximately 1,398 full-time jobs. Because of the failure to create and maintain jobs, the company paid a total of \$2.5 million dollars back to the State as their remedies for failure to perform. In reference to the current MIIRF contract with Middleby, OSA strongly recommends MDA closely monitor the commitments to ensure Middleby is adhering to the contract to minimize and/or eliminate any future defaults.

Below is a time line that illustrates the activity of the Middleby Corporation formerly Viking Range Corporation:

### Timeline

Project Activity	Date	Amounts
Original Memorandum of Understanding	06/26/05	
Article I, Section 1.1 - Bond Issuance Amount		\$ 3,000,000
Article III, Section 3.2 - Warranted employment figures were 1,148 prior to the signing of the MOU (July 26, 2005)		
Article III, Section 3.3 - Create 250 new full-time direct jobs by May 1, 2008		
Article III, Section 3.3 - Maintain Employment until May 1, 2013 (1,398 employees)		
Article III, Section 3.5 - Capital Investment amount to be made by May 1, 2008		\$10,000,000
MDA notified Viking of its first default of the May 1, 2008 <u>measurement date</u> and of its penalty of \$312,000	12/01/08	
Viking paid the May 1, 2008 default penalty	01/13/09	\$ 312,000
First Addendum to MOU - The company was to create 250 full-time direct jobs on or before May 1, 2011 and maintained employment levels at 1,398 until May 1, 2016	04/06/09	
Viking Range notified Mississippi Department of Employee Security of layoffs - <b>16 Employees</b>	08/25/10	
OSA 1st official review of Viking - Management Letter #13 date January 5, 2012. The measurement date per the First Addendum MOU was not met to create 250 full-time direct jobs on or before May 1, 2011. The penalty should have been \$396,000. ( <b>Paid in full December 2014</b> )	09/20/11	\$ 396,000
Second Addendum to MOU - The company was to create 250 full-time direct jobs on or before May 1, 2015 and maintained employment levels at 1,398 until May 1, 2020	02/06/12	
Middleby Corporation of Elgin, Illinois purchased Viking Range Corporation	12/31/12	
Viking Range notified MDES of layoffs - <b>35 Employees</b>	11/14/13	
Viking Range notified MDES of layoffs - <b>140 Employees</b>	01/31/13	
Viking Range notified MDES of layoffs - <b>17 Employees</b>	04/29/15	
Viking Range notified MDES of layoffs - <b>35 Employees</b>	05/20/15	
Viking Range notified MDES of layoffs - <b>34 Employees</b>	07/08/15	
Middleby Corporation was granted a grant from the Industry Incentive Finance Revolving Fund Program (MIIRF)	02/02/17	\$ 5,000,000
OSA began its 2017 audit of Middleby/Viking and found they had not created 250 new full-time direct jobs by May 1, 2015. A \$600,000 penalty should have been imposed. ( <b>Paid in full December 2015</b> )	02/28/17	\$ 600,000
MDA sent a <b>Letter of Default</b> to Middleby/Viking requesting payment of \$1.2 million	06/02/17	
MDA notified OSA they sent a <b>Letter of Default</b> to Middleby/Viking	06/16/17	
Middleby/Viking made a \$1,200,00 payment to MDA for failure to maintain required employment figures for May 1, 2016 & May 1, 2017 ( <b>Paid in full July 2017</b> )	07/31/17	\$ 1,200,000
MDA issued a <b>Letter of Default</b> to Middleby Corporation for failure to maintained 400 full-time jobs under the MIIRF grant agreement ( <b>Paid in full August 2017</b> )	07/28/17	\$ 13,300.07