MICHAEL BAKER CORP
Form 10-Q
May 05, 2011

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q
QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended March 31, 2011
Commission file number 1-6627
MICHAEL BAKER CORPORATION
(Exact name of registrant as specified in its charter)

PENNSYLVANIA	25-0927646
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
Airside Business Park, 100 Airside Drive, Moon Township, PA	15108
(Address of principal executive offices)	(Zip Code)

(412) 269-6300
(Registrant s telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes þ No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes o No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer o	Accelerated filer þ	Non-accelerated filer o (Do not check if smaller reporting company)	Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.) Yes o No þ

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date.

As of April 30, 2011:	
Common Stock	9,297,719 shares

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PART I FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements.

MICHAEL BAKER CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF INCOME (Unaudited)

(In thousands, except per share amounts)	**For the three months ended March 31, 2011**	2010
Revenues	**$ 121,033**	$ 111,660
Cost of work performed	**99,904**	90,141
Gross profit	**21,129**	21,519
Selling, general and administrative expenses	**19,720**	14,599
Operating income	**1,409**	6,920
Other income/(expense):		
Equity income from unconsolidated subsidiary	**51**	669
Interest income	**110**	74
Interest expense	**(27)**	(8)
Other, net	**(11)**	10
Income before income taxes and noncontrolling interests	**1,532**	7,665
Provision for income taxes	**447**	2,766
Net income from continuing operations before noncontrolling interests	**1,085**	4,899
Income/(loss) from discontinued operations, net of tax	**84**	(628)
Net income before noncontrolling interests	**1,169**	4,271
Less: Income attributable to noncontrolling interests	**(337)**	(286)
Net income attributable to Michael Baker Corporation	**832**	3,985
Other comprehensive loss unrealized loss on investments	**(16)**	(19)
Comprehensive income attributable to Michael Baker Corporation	**$ 816**	$ 3,966
Earnings per share (E.P.S.) attributable to Michael Baker Corporation		
Basic E.P.S. Continuing operations	**$ 0.08**	$ 0.52
Diluted E.P.S. Continuing operations	**0.08**	0.52
Basic E.P.S. Net income	**0.09**	0.45
Diluted E.P.S. Net income	**$ 0.09**	$ 0.45

The accompanying notes are an integral part of the condensed consolidated financial statements.

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MICHAEL BAKER CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)

	As of	
(In thousands, except share amounts)	**March 31, 2011**	December 31, 2010
ASSETS		
Current Assets		
Cash and cash equivalents	**$ 80,091**	$ 77,443
Available-for-sale securities	**12,352**	9,795
Receivables, net of allowances of $495 and $601, respectively	**72,926**	73,681
Unbilled revenues on contracts in progress	**56,965**	58,884
Prepaid expenses and other	**7,420**	10,400
Total current assets	**229,754**	230,203
Property, Plant and Equipment, net	**17,261**	16,847
Other Long-term Assets		
Goodwill	**53,441**	53,441
Other intangible assets, net	**12,832**	14,569
Deferred tax asset	**1,074**	878
Other long-term assets	**5,072**	5,127
Total other long-term assets	**72,419**	74,015
Total assets	**$ 319,434**	$ 321,065
LIABILITIES AND SHAREHOLDERS INVESTMENT		
Current Liabilities		
Accounts payable	**$ 33,525**	$ 38,918
Accrued employee compensation	**24,532**	20,638
Accrued insurance	**11,754**	11,992
Billings in excess of revenues on contracts in progress	**17,564**	18,816
Deferred income tax liability	**6,405**	6,405
Income taxes payable	**354**	545
Other accrued expenses	**9,329**	8,915
Total current liabilities	**103,463**	106,229
Long-term Liabilities		
Deferred income tax liability	**9,270**	9,894
Other long-term liabilities	**8,510**	8,405
Total liabilities	**121,243**	124,528
Shareholders Investment		
	9,789	9,718

Common Stock, par value $1, authorized 44,000,000 shares, issued 9,789,256 and 9,718,351, respectively		
Additional paid-in capital	**60,278**	59,637
Retained earnings	**132,133**	131,301
Accumulated other comprehensive loss	**(96)**	(80)
Less 495,537 shares of Common Stock in treasury, at cost	**(4,761)**	(4,761)
Total Michael Baker Corporation shareholders investment	**197,343**	195,815
Noncontrolling interests	**848**	722
Total shareholders investment	**198,191**	196,537
Total liabilities and shareholders investment	**$ 319,434**	$ 321,065

The accompanying notes are an integral part of the condensed consolidated financial statements.

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MICHAEL BAKER CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)

(In thousands)	For the three months ended March 31, 2011	2010
Cash Flows from Operating Activities		
Net income	**$ 1,169**	$ 4,271
Adjustments to reconcile net income to net cash provided by operating activities:		
Net (income)/loss from discontinued operations	**(84)**	628
Depreciation and amortization	**3,118**	1,028
Stock based compensation	**449**	28
Changes in assets and liabilities:		
Decrease in receivables	**500**	2,326
Decrease/(increase) in unbilled revenues and billings in excess, net	**667**	(6,932)
Decrease/(increase) in other net assets	**2,504**	(1,487)
(Decrease)/increase in accounts payable	**(4,707)**	1,193
Increase in accrued expenses	**4,397**	1,267
Net cash provided by continuing operations	**8,013**	2,322
Net cash (used in)/provided by discontinued operations	**(714)**	201
Net cash provided by operating activities	**7,299**	2,523
Cash Flows from Investing Activities		
Additions to property, plant and equipment	**(1,808)**	(2,140)
Purchase of short-term investments		(250)
Purchase of available-for-sale securities	**(4,291)**	(10,186)
Sale of available-for-sale securities	**1,706**	
Net cash used in continuing operations	**(4,393)**	(12,576)
Net cash provided by discontinued operations		9,965
Net cash used in investing activities	**(4,393)**	(2,611)
Cash Flows from Financing Activities		
Payments on capital lease obligations	**(47)**	(45)
Noncontrolling interest distributions	**(211)**	
Net cash used in financing activities	**(258)**	(45)
Net increase/(decrease) in cash and cash equivalents	**2,648**	(133)
Cash and cash equivalents, beginning of period	**77,443**	105,259
Cash and cash equivalents, end of period	**$ 80,091**	$ 105,126

The accompanying notes are an integral part of the condensed consolidated financial statements.

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MICHAEL BAKER CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

1. NATURE OF BUSINESS

Michael Baker Corporation (the Company) was founded in 1940 and organized as a Pennsylvania corporation in 1946. Currently, through its operating subsidiaries, the Company provides engineering expertise for public and private sector clients worldwide. The Company s Transportation and Federal business segments provide a variety of services to the Company s markets. The Transportation segment provides services for Surface Transportation, Aviation and Rail & Transit markets while the Federal segment provides services for Defense, Environmental, Architecture, Geospatial Information Technology, Homeland Security, Municipal & Civil, Pipelines & Utilities and Water markets. Among the services the Company provides to clients in these markets are program management, design-build (for which the Company provides only the design portion of services), construction management, consulting, planning, surveying, mapping, geographic information systems, architectural and interior design, construction inspection, constructability reviews, site assessment and restoration, strategic regulatory analysis and regulatory compliance.

2. BASIS OF PRESENTATION

The accompanying unaudited condensed consolidated financial statements and notes have been prepared by the Company in accordance with accounting principles generally accepted in the United States of America for interim financial reporting and with the Securities and Exchange Commission s (SEC s) instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and related notes that would normally be required by accounting principles generally accepted in the United States of America for audited financial statements. These unaudited condensed consolidated financial statements should be read in conjunction with the Company s audited consolidated financial statements in the Company s Annual Report on Form 10-K filed for the year ended December 31, 2010 (the Form 10-K).

The accompanying unaudited condensed consolidated financial statements include all adjustments (of a normal and recurring nature) that management considers necessary for a fair statement of financial information for the interim periods. Interim results are not necessarily indicative of the results that may be expected for the remainder of the year ending December 31, 2011.

On May 3, 2010, the Company entered into a Stock Purchase Agreement (SPA) to acquire 100% of the outstanding shares of The LPA Group Incorporated and all of its subsidiaries and affiliates (LPA) for $59.5 million. This transaction was funded with approximately $51.4 million of cash on hand and approximately $8.1 million of the Company s stock. The transaction was subject to a working capital adjustment provision resulting in an additional payment of approximately $1.1 million to the former shareholders in June 2010. See further discussion in the LPA Acquisition note.

On September 30, 2009, the Company divested substantially all of its subsidiaries that pertained to its former Energy segment (the Energy sale). Additionally, the Company sold its interest in B.E.S. Energy Resources Company, Ltd. (B.E.S.), an Energy company, on December 18, 2009 to J.S. Technical Services Co., LTD., which is owned by the Company s former minority partner in B.E.S. As a result of these dispositions, the results of the Company s former Energy segment, (Baker Energy), have been reclassified as discontinued operations for all periods presented in the unaudited Condensed Consolidated Statements of Income and unaudited Condensed Consolidated Statements of Cash Flows. All amounts reflected as discontinued operations in these statements are attributable to the Company.

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3. LPA ACQUISITION

The results of operations for LPA are included in the Company s unaudited Condensed Consolidated Statement of Income for the three months ended March 31, 2011. The unaudited pro-forma financial information summarized in the following table gives effect to the LPA acquisition and assumes that it occurred on January 1, 2010:

(In thousands, except per share data)		**For the three months ended March 31, 2010**
Continuing operations		
Revenues	$	137,040
Net income		5,437
Diluted earnings per share	$	0.59

The pro-forma financial information does not include any costs related to the acquisition. In addition, the pro-forma financial information does not assume any impacts from revenue, cost or other operating synergies that are expected as a result of the acquisition. Pro-forma adjustments have been made to reflect amortization of the identifiable intangible assets for the related periods. Identifiable intangible assets are being amortized on a basis approximating the economic value derived from those assets. The unaudited pro-forma financial information is not necessarily indicative of what the Company s results would have been had the acquisition been consummated on such dates or project results of operations for any future period.

4. EARNINGS PER COMMON SHARE

The following table presents the Company s basic and diluted earnings per share computations:

	For the three months ended March 31,	
(In thousands)	**2011**	2010
Net income from continuing operations before noncontrolling interests	**$ 1,085**	$ 4,899
Less: Income attributable to noncontrolling interest	**(337)**	(286)
Net income from continuing operations attributable to Michael Baker Corporation	**748**	4,613
Net income/(loss) from discontinued operations, net of tax	**84**	(628)
Net income attributable to Michael Baker Corporation	**$ 832**	$ 3,985

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(In thousands, except per share data)	**For the three months ended March 31, 2011**	2010
Basic:		
Weighted average shares outstanding	**8,958**	8,883
Earnings/(loss) per share:		
Continuing operations	**$ 0.08**	$ 0.52
Discontinued operations	**0.01**	(0.07)
Total	**$ 0.09**	$ 0.45
Diluted:		
Effect of dilutive securities Contingently issuable shares and stock based compensation	**312**	66
Weighted average shares outstanding	**9,270**	8,949
Earnings/(loss) per share:		
Continuing operations	**$ 0.08**	$ 0.52
Discontinued operations	**0.01**	(0.07)
Total	**$ 0.09**	$ 0.45

For the three months ended March 31, 2011 and 2010, Company stock options totaling 48,000 and 32,000, respectively, were excluded from the computations of diluted shares outstanding because the option exercise prices were more than the average market price of the Company s common shares.

5. BUSINESS SEGMENT INFORMATION

The Company s Transportation and Federal business segments reflect how executive management makes resource decisions and assesses its performance. Each segment operates under a separate management group and produces discrete financial information which is reviewed by management. The accounting policies of the business segments are the same as those described in the summary of significant accounting policies in the Company s Form 10-K.

The Transportation segment provides services for Surface Transportation, Aviation, and Rail & Transit markets. The Federal segment provides services for Defense, Environmental, Architecture, Geospatial Information Technology, Homeland Security, Municipal & Civil, Pipelines & Utilities and Water markets. Among the services the Company provides to clients in these markets are program management, design-build (for which the Company provides only the design portion of services), construction management, consulting, planning, surveying, mapping, geographic information systems, architectural and interior design, construction inspection, constructability reviews, site assessment and restoration, strategic regulatory analysis and regulatory compliance. LPA s results are reflected in the Company s Transportation segment.

The Company evaluates the performance of its segments primarily based on income from operations. Corporate overhead includes functional unit costs related to finance, legal, human resources, information technology, communications and other Corporate functions. Corporate overhead is allocated between the Transportation and Federal segments based on that segment s percentage of total direct labor. A portion of Corporate income and expense is not allocated to the segments.

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The following tables reflect disclosures for the Company s business segments:

(In millions)	**For the three months ended March 31, 2011**	2010
Revenues		
Transportation	**$ 70.2**	$ 50.9
Federal	**50.8**	60.8
Total revenues	**$ 121.0**	$ 111.7
Gross profit		
Transportation	**$ 9.8**	$ 8.7
Federal	**11.7**	12.8
Corporate	**(0.4)**	
Total gross profit	**21.1**	21.5
Less: SG&A		
Transportation	**(12.5)**	(7.1)
Federal	**(7.2)**	(7.5)
Total SG&A	**(19.7)**	(14.6)
Total operating (loss)/income		
Transportation	**(2.7)**	1.6
Federal	**4.5**	5.3
Corporate	**(0.4)**	
Total operating income	**$ 1.4**	$ 6.9

(In millions)	**As of March 31, 2011**	December 31, 2010
Segment assets:		
Transportation	**$ 153.0**	$ 159.1
Federal	**61.2**	59.6
Corporate	**105.2**	102.4
Total	**$ 319.4**	$ 321.1

The Federal segment had equity investments in unconsolidated subsidiaries of $0.4 million and $0.6 million as of March 31, 2011 and December 31, 2010, respectively, and a nominal loss from its unconsolidated subsidiaries for the three months ended March 31, 2011 compared to income of $0.7 million for the three months ended March 31, 2010. The Transportation segment had equity investments in unconsolidated subsidiaries of $0.2 million as of March 31, 2011 and $0.1 million as of December 31, 2010 and income from its unconsolidated subsidiaries of $0.1 million for the three months ended March 31, 2011.

The Company has determined that interest expense, interest income and intersegment revenues, by segment, are immaterial for disclosure in these condensed consolidated financial statements.

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6. INCOME TAXES

The Company bases its consolidated effective income tax rate for interim periods on its forecasted annual consolidated effective income tax rate, which includes estimates of the taxable income and revenue for jurisdictions in which the Company operates. Total tax expense then was allocated between continuing operations and discontinued operations. The following table presents the components of the Company s provision for income taxes:

(In thousands)	**For the three months ended March 31, 2011**	2010
Provision/(benefit) for income taxes:		
Continuing operations	**$ 447**	$ 2,766
Discontinued operations	**48**	(338)
Provision for income taxes	**$ 495**	$ 2,428

The Company s full-year forecasted effective income tax rate for continuing operations was 37.5% for both three-month periods ended March 31, 2011 and 2010, respectively. As a comparison, the Company s actual effective income tax rate for continuing operations for the year ended December 31, 2010 was 39.0%. The variances between the U.S. federal statutory rate of 35% and the Company s forecasted effective income tax rate for the three months ended March 31, 2011 and 2010 is primarily due to state income taxes and permanent items that are not deductible for U.S. tax purposes, partially offset by the reversals of portions of the Company s valuation allowance related to foreign tax credits totaling $0.4 million and $0.3 million during the three months ended March 31, 2011 and 2010, respectively. As a comparison, the Company reversed portions of its valuation allowance related to foreign tax credits totaling $0.5 million for the year ended December 31, 2010, but this amount was offset by non-deductible acquisition related costs totaling $0.8 million.

As of March 31, 2011 and December 31, 2010, the Company s reserve for uncertain tax positions totaled approximately $2.6 million. Changes in this reserve could impact the Company s effective tax rate in subsequent periods. The Company recognizes interest and penalties related to uncertain income tax positions in interest expense and selling, general, and administrative expenses, respectively, in its condensed consolidated statements of income. As of both March 31, 2011 and December 31, 2010, the Company s reserves for interest and penalties related to uncertain tax positions totaled approximately $0.7 million.

7. AVAILABLE-FOR-SALE SECURITIES

The Company s available-for-sale securities are primarily comprised of highly-rated corporate, U.S. Treasury and U.S. federally-sponsored agency bonds and are recorded at fair value. As of March 31, 2011 and December 31, 2010 the Company held available-for-sale securities of $12,352,000 and $9,795,000, respectively. Interest income from the available-for-sale securities was $93,000 and $9,000 for the three months ended March 31, 2011 and 2010, respectively.

(In thousands)	**Amortized Cost**	**Gross Unrealized Gains**	**Gross Unrealized Losses**	**Fair Value**
Debt securities				
December 31, 2010	$ 9,812	$ 23	$ (40)	$ 9,795
March 31, 2011	**$ 12,384**	**$ 18**	**$ (50)**	**$ 12,352**

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The following table presents the Company s maturities of debt securities at fair value as of March 31, 2011:

(In thousands)	
Mature within one year	$ 3,553
Mature in one to five years	8,799
Total	**$ 12,352**

8. FAIR VALUE MEASUREMENTS

The FASB s guidance defines fair value as the exit price associated with the sale of an asset or transfer of a liability in an orderly transaction between market participants at the measurement date. Under this guidance, valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. In addition, this guidance establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include:

Level 1 Quoted prices in active markets for identical assets or liabilities.

Level 2 Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 Unobservable inputs (i.e. projections, estimates, interpretations, etc.) that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

As of March 31, 2011, the Company held cash equivalents as investments in money market funds totaling $27.7 million and available-for-sale securities in highly-rated corporate and U.S. federally-sponsored agency bonds totaling $12.4 million in accounts held by major banks and financial institutions.

The following tables present the Company s fair value hierarchy for its financial assets measured at fair value on a recurring basis:

(In thousands)	**Total**	**Quoted Market Prices in Active Markets for Identical Assets (Level 1)**	**Significant Other Observable Inputs (Level 2)**	**Significant Unobservable Inputs (Level 3)**
March 31, 2011				
Cash equivalents	$ 27,736	$ 27,736	$	$
Available-for-sale securities	12,352	12,352		
Total cash equivalents and investments	$ 40,088	$ 40,088	$	$
Percent to total	100%	100%		

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(In thousands)	Total	Quoted Market Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
December 31, 2010				
Cash equivalents	$ 30,279	$ 30,279	$	$
Available-for-sale securities	9,795	9,795		
Total cash equivalents and investments	$ 40,074	$ 40,074	$	$
Percent to total	100%	100%		

9. COMMITMENTS & CONTINGENCIES

Commitments

The Company had certain guarantees and indemnifications outstanding which could result in future payments to third parties. These guarantees generally result from the conduct of the Company s business in the normal course. The Company s outstanding guarantees as of March 31, 2011 were as follows:

(In millions)	Maximum undiscounted future payments
Standby letters of credit*:	
Insurance related	$ 7.3
Other	0.4
Performance and payment bonds*	14.3

* *These instruments require no associated liability on the Company s Consolidated Balance Sheet.*

The Company s banks issue standby letters of credit (LOCs) on the Company s behalf under the Unsecured Credit Agreement (the Credit Agreement), as discussed more fully in the Long-Term Debt and Borrowing Agreements note. As of March 31, 2011, the majority of the balance of the Company s outstanding LOCs was issued to insurance companies to serve as collateral for payments the insurers are required to make under certain of the Company s self-insurance programs. These LOCs may be drawn upon in the event that the Company does not reimburse the insurance companies for claims payments made on its behalf. These LOCs renew automatically on an annual basis unless either the LOCs are returned to the bank by the beneficiaries or the banks elect not to renew them.

Bonds are provided on the Company s behalf by certain insurance carriers. The beneficiaries under these performance and payment bonds may request payment from the Company s insurance carriers in the event that the Company does not perform under the project or if subcontractors are not paid. The Company does not expect any amounts to be paid under its outstanding bonds as of March 31, 2011. In addition, the Company believes that its bonding lines will be sufficient to meet its bid and performance bonding needs for at least the next year.

The Company indemnified the buyer of Baker Energy for certain legacy costs related to its former Energy segment in excess of amounts accrued as of the transaction date. These costs include but are not limited to insurance and taxes.

Reflected in the Company s March 31, 2011 unaudited condensed consolidated balance sheet are both liabilities and assets related to Baker Energy s workers compensation, automobile and health insurances through September 30, 2009. As part of the sale of Baker Energy, the buyer agreed to assume the liabilities associated with those insurances, subject to certain indemnifications, as of

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September 30, 2009. However, corresponding liabilities representing the reserves associated with these insurances, including reserves for incurred but not reported claims, are included in the Company s Condensed Consolidated Balance Sheet as those insurances are written to the Company, rather than to a Baker Energy entity. As such, the Company is required to maintain reserves for these insurances in its condensed consolidated balance sheet. As the buyer assumed the liabilities associated with these insurances as of the closing balance sheet, the Company has also recorded a corresponding receivable from the buyer representing the amount of the aggregate insurance liabilities as of September 30, 2009 for the Energy Business, less reimbursements made to the Company through March 31, 2011.

Contingencies

Camp Bonneville Project. In 2006, Michael Baker Jr., Inc. (MB Jr.), a subsidiary of the Company, entered into a contract whereby it agreed to perform certain services (the Services) in connection with a military base realignment and closure (BRAC) conservation conveyance of the Camp Bonneville property (the Property) located in Clark County, Washington. The Property was formerly owned by the United States Army (the Army). MB Jr s. contract for the performance of the Services is with the Bonneville Conservation Restoration and Renewal Team (BCRRT), a not-for-profit corporation which holds title to the Property. BCRRT, in turn, has a contract with Clark County, Washington (the County) to perform services in connection with the Property and is signatory to a prospective purchaser consent decree (PPCD) with the Washington Department of Ecology (WDOE) regarding cleanup on the Property. The County is funding the services via an Environmental Services Cooperative Agreement (ESCA) grant from the Army and ultimately intends to use the Property as a park when cleanup is complete. As part of the Services, MB Jr., through a subcontractor, MKM Engineers (MKM), was performing remediation of hazardous waste and military munitions including Munitions and Explosives of Concern (MEC) on the Property.

Based upon the discovery of additional MEC to be remediated at the site, the WDOE has significantly increased the cleanup required to achieve site closure. WDOE put a Cleanup Action Plan (CAP) containing these increased requirements out for public comment on June 8, 2009 at which point BCRRT, with the assistance of MB Jr. and MKM, entered into dispute resolution with WDOE regarding the CAP. Dispute resolution concluded without the parties reaching agreement. MB Jr. is in the process of analyzing its next steps.

MB Jr. s contract with BCRRT is fixed price, as is MKM s contract with MB Jr. These contracts provide for two avenues of financial relief from the fixed price. First, the Army has agreed to provide Army Contingent Funding (ACF) to cover cost overruns associated with military munitions remediation. Under the ESCA, ACF is available once the County and its contractors have expended 120% of the $10.7 million originally estimated for military munitions remediation costs. Once this threshold has been reached, the ACF would cover ninety percent (90%) of actual costs up to a total of $7.7 million.

On June 1, 2009, at the urging of BCRRT, MB Jr. and MKM (hereinafter the BCRRT Team), the County sent a letter to the Army requesting that it begin the process of releasing ACF to cover additional costs of munitions response, and on June 26, 2009 the Army responded by requesting documentation of the costs incurred to date. On September 1, 2009, the BCRRT Team submitted this additional documentation to the County, and the County promptly sent this information to the Army. On October 20, 2009 the Army responded to the County s request for ACF denying payment. The BCRRT Team strenuously disagrees with the Army s reasons for doing so. In December of 2009, the BCRRT Team met with the Army and the Army requested that the BCRRT Team provide more information regarding cost documentation already submitted and additional cost documentation in order to update the ACF claim through December of 2009. This information and cost documentation was provided in January of 2010. In April of 2010, the Army indicated that it would respond regarding the ACF claim within the next one-hundred and twenty (120) days. Following the contingent settlement discussed below, in November 2010, the Army made an initial payment of ACF to the BCRRT Team, including a payment to Baker of

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