

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): May 5, 2021

CONSTRUCTION PARTNERS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38479
(Commission
File Number)

26-0758017
(I.R.S. Employer
Identification Number)

290 Healthwest Drive, Suite 2
Dothan, Alabama 36303
(Address of principal executive offices) (ZIP Code)

(334) 673-9763
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading symbol(s) | Name of each exchange on which registered |
|---|-------------------|--|
| Class A common stock, \$0.001 par value | ROAD | The Nasdaq Stock Market LLC (Nasdaq Global Select Market) |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 2.02. Results of Operations and Financial Condition.

On May 7, 2021, Construction Partners, Inc. (the “Company”) issued a press release announcing its financial results for the fiscal quarter ended March 31, 2021. A copy of the press release is furnished as Exhibit 99.1 hereto, and the information contained in Exhibit 99.1 is incorporated herein by reference.

The information furnished pursuant to this Item 2.02, including Exhibit 99.1, shall not be deemed to be “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and will not be incorporated by reference into any registration statement filed under the Securities Act of 1933, as amended, unless specifically identified therein as being incorporated therein by reference.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On May 5, 2021, the Company entered into a Second Amendment to Employment Agreement (the “Amendment”) with Fred J. Smith, III, in connection with Mr. Smith’s previously announced promotion to President and Chief Executive Officer of the Company. The Amendment modifies Mr. Smith’s existing Employment Agreement, as amended (the “Employment Agreement”) by (i) changing his title to reflect his new position and (ii) increasing the minimum base salary that Mr. Smith will earn during the remaining term of the Employment Agreement to \$550,000.00. All other provisions of their existing Employment Agreement remain unchanged. The Amendment is filed as Exhibit 10.1 to this Current Report on Form 8-K, and the description of the Amendment is qualified in its entirety by reference to such exhibit.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 10.1** | Second Amendment to Employment Agreement, effective as of May 5, 2021, by and between Construction Partners, Inc. and Fred J. Smith, III |
| 99.1* | Press release dated May 7, 2021 announcing financial results for the fiscal quarter ended March 31, 2021 |
| 104** | Cover Page Interactive Data File (embedded within the Inline XBRL document) |

* Furnished herewith.

** Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CONSTRUCTION PARTNERS, INC.

Date: May 7, 2021

By: /s/ R. Alan Palmer
R. Alan Palmer
Executive Vice President and Chief Financial Officer

**SECOND AMENDMENT
to
EMPLOYMENT AGREEMENT**

THIS SECOND AMENDMENT TO EMPLOYMENT AGREEMENT (this "Amendment"), is made and entered into effective as of May 5, 2021 (the "Effective Date"), by and between Construction Partners, Inc., a Delaware corporation (the "Company"), and Fred J. Smith, III, an individual resident of North Carolina ("Executive").

Recitals:

A. The Company and Executive have previously entered into an Employment Agreement dated as of April 1, 2020 and an Amendment to Employment Agreement dated as of October 1, 2020 (collectively, the "Employment Agreement").

B. The Company's Board of Directors (the "Board") appointed Executive to serve as President and Chief Executive Officer of the Company, effective following the close of business on March 31, 2021.

C. The Compensation Committee of the Board has approved an increase in Executive's base salary commensurate with the increase in Executive's responsibilities as a result of assuming the role of President and Chief Executive Officer.

D. The Company and Executive desire to amend the Employment Agreement to provide for the modification of Executive's title and base salary, in each case, effective as of the Effective Date, on the terms and conditions set forth herein.

Amendment:

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Definition of Terms. All capitalized terms contained herein and not otherwise defined shall be defined as provided in the Employment Agreement.
2. Amendment. Effective as of the Effective Date, the Employment Agreement is amended as follows:
 - a. Each instance of the phrase "Chief Operating Officer" in the Agreement is deleted and replaced with "President and Chief Executive Officer."
 - b. Section 4(a) of the Agreement is amended by deleting "\$470,000.00" and replacing it with "\$550,000.00."
3. Full Force and Effect. Except as modified hereby, the Agreement remains unmodified and in full force and effect.
4. Successors and Assigns. This Amendment shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise provided herein.

[Signature page follows.]

IN WITNESS WHEREOF, this Amendment has been executed by the parties hereto, the Company acting through its duly authorized officer, in duplicate originals, on the date first set forth above.

Company:

Construction Partners, Inc.

By: /s/ Ned N. Fleming, III

Print Name: Ned N. Fleming, III

Title: Executive Chairman

Executive:

/s/ Fred J. Smith, III

Fred J. Smith, III



NEWS RELEASE

Construction Partners, Inc. Announces Fiscal 2021 Second Quarter Results

Company Reports Record Backlog of \$773 Million

Company Maintains Fiscal 2021 Outlook

DOTHAN, AL, May 7, 2021 – Construction Partners, Inc. (NASDAQ: ROAD) (“CPI” or the “Company”), a vertically integrated civil infrastructure company specializing in the construction and maintenance of roadways across five southeastern states, today reported financial and operating results for the fiscal quarter ended March 31, 2021.

Fred J. (Jule) Smith, III, the Company’s President and Chief Executive Officer, said, “In the second fiscal quarter, revenue grew 6.2% compared to the second fiscal quarter last year. While adverse weather caused significant project delays in the second quarter, we plan to make up that volume in the second half of our fiscal year. As we have stated before, historically we have generated approximately 40% of our annual revenue in the first half of the fiscal year and approximately 60% in the second half. Halfway through fiscal 2021, we are roughly in line with our historical pattern, even with the weather delays.

“More importantly, we are very pleased with our record high project backlog of \$773.3 million at the end of the quarter. As we move into the seasonally stronger second half of our fiscal year, we continue to see strength in infrastructure funding programs and project lettings across our markets. In light of these positive conditions, we are maintaining our outlook for fiscal 2021.”

Revenues for the second fiscal quarter of 2021 were \$179.1 million, an increase of 6.2% compared to the second quarter of last year. Gross profit was \$18.1 million in the second fiscal quarter of 2021, a decrease of 10.4% compared to the second fiscal quarter of last year.

General and administrative expenses were \$24.5 million (consisting of a nonrecurring \$3.2 million legal settlement unrelated to the Company’s core operations, associated legal expenses of \$0.7 million, and \$20.6 million of other general and administrative expenses), compared to general and administrative expenses of \$16.8 million in the second fiscal quarter of 2020 and \$20.1 million in the first fiscal quarter of 2021. The settlement and associated legal expenses during the quarter related to claims arising out of a former stockholder’s sale of shares of the Company’s common stock in a private transaction prior to the Company’s initial public offering. In addition to the legal and settlement expenses, the sequential increase in general and administrative expenses was primarily due to payroll increases related to acquisitions completed during the first fiscal quarter of 2021, new corporate positions and compensation initiatives.

On a GAAP basis, the Company had a net loss of \$4.9 million in the second fiscal quarter, compared to net income of \$1.5 million in the second fiscal quarter of 2020. On a non-GAAP basis, adjusted net loss ⁽¹⁾ was \$2.0 million in the second fiscal quarter of 2021, compared to adjusted net income of \$1.6 million in the second fiscal quarter of 2020.

Adjusted EBITDA ⁽¹⁾ for the second fiscal quarter of 2021, which includes the nonrecurring legal and settlement expenses described above, was \$11.0 million, compared to \$14.3 million for the second fiscal quarter of last year.

Project backlog at March 31, 2021 was \$773.3 million, compared to \$665.6 at December 31, 2020 and \$579.1 million at March 31, 2020.

Smith continued, “We extended our commitment to investing in our people during the quarter as we continue to prepare for future acquisition growth. The most critical component of our success has been, and will continue to be, our people. Acquiring, integrating and enhancing new construction operations, facilities and employees in new markets is essential to our growth strategy. In the past six months, we have added 13 hot-mix asphalt plants and more than 300 employees through acquisitions. Acquired operations frequently create near-term margin headwinds as legacy backlog projects are completed at lower margins. However, historically, within twelve to eighteen months post-acquisition, we have been able to raise project margins and expand market share. As a consolidator in our space, we continue to see tremendous growth opportunities.”

Ned N. Fleming, III, the Company’s Executive Chairman, stated, “CPI is well positioned for growth in a highly fragmented market with strong industry demand and growing infrastructure funding. Through our proven strategy, we expect to improve

⁽¹⁾ Adjusted net income (loss) and Adjusted EBITDA are financial measures not presented in accordance with generally accepted accounting principles (“GAAP”). Please see “Reconciliation of Non-GAAP Financial Measures” at the end of this press release.

our relative market share in the rapidly growing southeastern United States. Today, we see more acquisition opportunities than at any point in the past. Our long-term strategy, we believe, will provide value to all of our stakeholders.”

Conference Call

The Company will conduct a conference call today at 9:00 a.m. Central Time to discuss financial and operating results for the quarter ended March 31, 2021. To access the call live by phone, dial (412) 902-0003 and ask for the Construction Partners call at least 10 minutes prior to the start time. A telephonic replay will be available through May 14, 2021 by calling (201) 612-7415 and using passcode 13717830#. A webcast of the call will also be available live and for later replay on the Company’s Investor Relations website at www.constructionpartners.net.

About Construction Partners, Inc.

Construction Partners, Inc. is a vertically integrated civil infrastructure company operating across five southeastern states, with 48 hot-mix asphalt plants, nine aggregate facilities and one liquid asphalt terminal. Publicly funded projects make up the majority of its business and include local and state roadways, interstate highways, airport runways and bridges. The majority of the Company’s public projects are maintenance-related. Private sector projects include paving and sitework for office and industrial parks, shopping centers, local businesses and residential developments. To learn more, visit www.constructionpartners.net.

Cautionary Note Regarding Forward-Looking Statements

Certain statements contained herein that are not statements of historical or current fact constitute “forward-looking statements” within the meaning of Section 21E of the Securities Exchange Act of 1934. These statements may be identified by the use of words such as “may,” “will,” “expect,” “should,” “anticipate,” “intend,” “project,” “outlook,” “believe” and “plan.” The forward-looking statements contained in this press release include, without limitation, statements related to financial projections, future events, business strategy, future performance, future operations, backlog, financial position, estimated revenues and losses, projected costs, prospects, plans and objectives of management. These and other forward-looking statements are based on management’s current views and assumptions and involve risks and uncertainties that could significantly affect expected results. Important factors could cause actual results to differ materially from those expressed in the forward-looking statements, including, among others: our ability to successfully manage and integrate acquisitions; failure to realize the expected economic benefits of acquisitions, including future levels of revenues being lower than expected and costs being higher than expected; failure or inability to implement growth strategies in a timely manner; declines in public infrastructure construction and reductions in government funding, including the funding by transportation authorities and other state and local agencies; risks related to our operating strategy; competition for projects in our local markets; risks associated with our capital-intensive business; government requirements and initiatives, including those related to funding for public or infrastructure construction, land usage and environmental, health and safety matters; unfavorable economic conditions and restrictive financing markets; our ability to obtain sufficient bonding capacity to undertake certain projects; our ability to accurately estimate the overall risks, requirements or costs when we bid on or negotiate contracts that are ultimately awarded to us; the cancellation of a significant number of contracts or our disqualification from bidding for new contracts; risks related to adverse weather conditions; our substantial indebtedness and the restrictions imposed on us by the terms thereof; our ability to maintain favorable relationships with third parties that supply us with equipment and essential supplies; our ability to retain key personnel and maintain satisfactory labor relations; property damage, results of litigation and other claims and insurance coverage issues; risks related to our information technology systems and infrastructure; our ability to maintain effective internal control over financial reporting; risks from the COVID-19 pandemic, and the risks, uncertainties and factors set forth under “Risk Factors” in the Company’s most recent Annual Report on Form 10-K and its subsequently filed Quarterly Reports on Form 10-Q. Forward-looking statements speak only as of the date they are made. The Company assumes no obligation to update forward-looking statements to reflect actual results, subsequent events, or circumstances or other changes affecting such statements except to the extent required by applicable law.

Contacts:

Rick Black / Ken Dennard
Dennard Lascar Investor Relations
ROAD@DennardLascar.com
(713) 529-6600

- Financial Statements Follow -

Construction Partners, Inc.
Consolidated Statements of Income
(unaudited, in thousands, except share and per share data)

| | For the Three Months Ended March 31, | | For the Six Months Ended March 31, | |
|--|---|-----------------|---------------------------------------|-----------------|
| | 2021 | 2020 | 2021 | 2020 |
| Revenues | \$ 179,112 | \$ 168,679 | \$ 370,041 | \$ 343,993 |
| Cost of revenues | 161,040 | 148,505 | 321,375 | 300,062 |
| Gross profit | 18,072 | 20,174 | 48,666 | 43,931 |
| General and administrative expenses | (24,475) | (16,821) | (44,559) | (33,934) |
| Gain on sale of equipment, net | 9 | 435 | 342 | 744 |
| Operating income | (6,394) | 3,788 | 4,449 | 10,741 |
| Interest expense, net | (298) | (1,834) | (766) | (2,115) |
| Other income (expense) | 244 | 44 | 409 | 109 |
| Income (loss) before provision for income taxes and earnings from investment in joint venture | (6,448) | 1,998 | 4,092 | 8,735 |
| Provision for income taxes | 1,513 | (531) | (1,167) | (1,850) |
| Earnings from investment in joint venture | — | 70 | 11 | 113 |
| Net income (loss) | <u>\$ (4,935)</u> | <u>\$ 1,537</u> | <u>\$ 2,936</u> | <u>\$ 6,998</u> |
| Net income (loss) per share attributable to common stockholders: | | | | |
| Basic | \$ (0.10) | \$ 0.03 | \$ 0.06 | \$ 0.14 |
| Diluted | \$ (0.10) | \$ 0.03 | \$ 0.06 | \$ 0.14 |
| Weighted average number of common shares outstanding: | | | | |
| Basic | 51,686,652 | 51,489,211 | 51,586,846 | 51,489,211 |
| Diluted | 51,686,652 | 51,619,403 | 51,673,582 | 51,612,340 |

Construction Partners, Inc.
Consolidated Balance Sheets
(in thousands, except share and per share data)

| | March 31, 2021 (unaudited) | September 30, 2020 |
|---|----------------------------------|-----------------------|
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 33,749 | \$ 148,316 |
| Contracts receivable including retainage, net | 125,146 | 131,770 |
| Costs and estimated earnings in excess of billings on uncompleted contracts | 17,675 | 7,873 |
| Inventories | 46,129 | 38,561 |
| Prepaid expenses and other current assets | 10,047 | 5,041 |
| Total current assets | 232,746 | 331,561 |
| Property, plant and equipment, net | 289,893 | 237,230 |
| Operating lease right-of-use assets | 6,778 | 7,383 |
| Goodwill | 77,442 | 46,348 |
| Intangible assets, net | 4,753 | 3,224 |
| Investment in joint venture | 109 | 198 |
| Other assets | 3,651 | 1,784 |
| Deferred income taxes, net | 386 | 386 |
| Total assets | \$ 615,758 | \$ 628,114 |
| LIABILITIES AND STOCKHOLDERS' EQUITY | | |
| Current liabilities: | | |
| Accounts payable | \$ 62,518 | \$ 64,732 |
| Billings in excess of costs and estimated earnings on uncompleted contracts | 26,443 | 33,704 |
| Current portion of operating lease liabilities | 1,663 | 2,046 |
| Current maturities of debt | 13,000 | 13,000 |
| Accrued expenses and other current liabilities | 22,706 | 22,347 |
| Total current liabilities | 126,330 | 135,829 |
| Long-term liabilities: | | |
| Long-term debt, net of current maturities | 72,680 | 79,053 |
| Operating lease liabilities, net of current portion | 5,308 | 5,554 |
| Deferred income taxes, net | 14,003 | 14,003 |
| Other long-term liabilities | 8,451 | 8,480 |
| Total long-term liabilities | 100,442 | 107,090 |
| Total liabilities | 226,772 | 242,919 |
| Commitments and contingencies | | |
| Stockholders' equity: | | |
| Preferred stock, par value \$0.001; 10,000,000 shares authorized at March 31, 2021 and September 30, 2020 and no shares issued and outstanding | — | — |
| Class A common stock, par value \$0.001; 400,000,000 shares authorized, 35,719,569 shares issued and outstanding at March 31, 2021, and 33,875,884 shares issued and outstanding at September 30, 2020 | 35 | 34 |
| Class B common stock, par value \$0.001; 100,000,000 shares authorized, 19,495,861 shares issued and 16,572,909 outstanding at March 31, 2021 and 20,828,813 shares issued and 17,905,861 outstanding at September 30, 2020 | 20 | 21 |
| Additional paid-in capital | 245,877 | 245,022 |
| Treasury stock, at cost, 2,922,952 shares of Class B common stock, par value \$0.001 | (15,603) | (15,603) |
| Retained earnings | 158,657 | 155,721 |
| Total stockholders' equity | 388,986 | 385,195 |
| Total liabilities and stockholders' equity | \$ 615,758 | \$ 628,114 |

Construction Partners, Inc.
Consolidated Statements of Cash Flows
(unaudited, in thousands)

| | For the Six Months Ended March 31, | |
|--|---|------------------|
| | 2021 | 2020 |
| Cash flows from operating activities: | | |
| Net income | \$ 2,936 | \$ 6,998 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation, depletion and amortization of long-lived assets | 23,385 | 19,031 |
| Amortization of deferred debt issuance costs and debt discount | 127 | 74 |
| Unrealized (gain) loss on derivative instruments | (2,377) | 2,263 |
| Provision for bad debt | 361 | 305 |
| Gain on sale of equipment, net | (342) | (744) |
| Equity-based compensation expense | 855 | 785 |
| Earnings from investment in joint venture | (11) | (113) |
| Distribution of earnings from investment in joint venture | 100 | 139 |
| Other non-cash adjustments | (24) | (11) |
| Changes in operating assets and liabilities, net of acquisition: | | |
| Contracts receivable including retainage, net | 6,263 | 16,680 |
| Costs and estimated earnings in excess of billings on uncompleted contracts | (9,802) | (4,071) |
| Inventories | (3,482) | (4,632) |
| Prepaid expenses and other current assets | (4,343) | 1,597 |
| Other assets | (1,275) | 332 |
| Accounts payable | (2,464) | (12,452) |
| Billings in excess of costs and estimated earnings on uncompleted contracts | (7,261) | (1,575) |
| Accrued expenses and other current liabilities | (8) | (3,967) |
| Other long-term liabilities | (240) | (24) |
| Net cash provided by operating activities, net of acquisitions | <u>2,398</u> | <u>20,615</u> |
| Cash flows from investing activities: | | |
| Purchases of property, plant and equipment | (26,898) | (34,512) |
| Proceeds from sale of equipment | 927 | 1,419 |
| Business acquisitions, net of cash acquired | (84,494) | (30,191) |
| Return of investment in joint venture | — | 361 |
| Net cash used in investing activities | <u>(110,465)</u> | <u>(62,923)</u> |
| Cash flows from financing activities: | | |
| Proceeds from issuance of long-term debt, net of debt issuance costs and discount | — | 24,777 |
| Repayments of long-term debt | (6,500) | (9,294) |
| Net cash (used in) provided by financing activities | <u>(6,500)</u> | <u>15,483</u> |
| Net change in cash and cash equivalents | (114,567) | (26,825) |
| Cash and cash equivalents: | | |
| Beginning of period | 148,316 | 80,619 |
| End of period | <u>\$ 33,749</u> | <u>\$ 53,794</u> |
| Supplemental cash flow information: | | |
| Cash paid for interest | \$ 1,303 | \$ 924 |
| Cash paid for income taxes | \$ 3,318 | \$ 3,400 |
| Operating lease right-of-use assets obtained in exchange for operating lease liabilities | \$ 615 | \$ 1,140 |
| Cash paid for operating lease liabilities | \$ 1,234 | \$ 1,672 |
| Non-cash items: | | |
| Property, plant and equipment included with accounts payable at period end | \$ 1,663 | \$ 794 |
| Non-compete agreements to seller in business combination | \$ 1,700 | \$ — |
| Amounts payable to seller in business combination | \$ 250 | \$ 2,642 |

Reconciliation of Non-GAAP Financial Measures

Adjusted EBITDA represents net income before, as applicable from time to time, (i) interest expense, net, (ii) provision (benefit) for income taxes, (iii) depreciation, depletion and amortization of long-lived assets, (iv) equity-based compensation expense, (v) loss on the extinguishment of debt, (vi) certain management fees and expenses and (vii) nonrecurring legal settlement costs and associated legal expenses unrelated to the Company's core operations. Adjusted net income (loss) represents net income (loss) before nonrecurring legal settlement costs and associated legal expenses unrelated to the Company's core operations, net of tax impact. These metrics are supplemental measures of our operating performance that are neither required by, nor presented in accordance with, GAAP. These measures have limitations as analytical tools and should not be considered in isolation or as an alternative to net income (loss) or any other performance measure derived in accordance with GAAP as an indicator of our operating performance. We present Adjusted EBITDA and Adjusted net income (loss) because management uses these measures as key performance indicators, and we believe that securities analysts, investors and others use these measures to evaluate companies in our industry. Our calculation of these measures may not be comparable to similarly named measures reported by other companies. Potential differences may include differences in capital structures, tax positions and the age and book depreciation of intangible and tangible assets.

The following table presents a reconciliation of net income (loss), the most directly comparable measure calculated in accordance with GAAP, to Adjusted EBITDA for the periods presented:

Construction Partners, Inc.
Net Income to Adjusted EBITDA Reconciliation
Fiscal Quarters Ended March 31, 2021 and 2020
(unaudited, in thousands)

| | For the Three Months Ended March 31, | |
|--|--------------------------------------|--------|
| | 2021 | 2020 |
| Net income (loss) | \$ (4,938) | 1,537 |
| Interest expense, net | 298 | 1,834 |
| Provision for income taxes | (1,513) | 531 |
| Depreciation, depletion and amortization of long-lived assets | 12,291 | 9,593 |
| Equity-based compensation expense | 460 | 390 |
| Management fees and expenses ⁽¹⁾ | 521 | 357 |
| Settlement of legal claim and associated legal expenses ⁽²⁾ | 3,876 | 97 |
| Adjusted EBITDA | \$ 10,998 | 14,339 |

⁽¹⁾ Reflects fees and reimbursement of certain out-of-pocket expenses under a management services agreement with an affiliate of SunTx Capital Partners, the Company's controlling stockholder.

⁽²⁾ Reflects a \$3.2 million legal settlement unrelated to the Company's core operations and associated legal expenses.

The following table presents a reconciliation of net income (loss), the most directly comparable measure calculated in accordance with GAAP, to adjusted net income (loss) for the periods presented:

Construction Partners, Inc.
Net Income to Adjusted Net Income (Loss) Reconciliation
Fiscal Quarters Ended March 31, 2021 and 2020
(unaudited, in thousands)

| | For the Three Months Ended March 31, | |
|--|---|--------------|
| | 2021 | 2020 |
| Net income (loss) | \$ (4,935) | 1,537 |
| Settlement of legal claim ⁽¹⁾ | 3,200 | — |
| Legal fees associated with settlement of legal claim | 676 | 97 |
| Tax impact due to above reconciling items | (977) | (24) |
| Adjusted net income (loss) | <u>\$ (2,036)</u> | <u>1,610</u> |

⁽¹⁾ Reflects a \$3.2 million legal settlement unrelated to the Company's core operations.