UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549
FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2023

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from__________ to __________

Commission File Number: 001-38479

Construction Partners, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware	**26-0758017**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
290 Healthwest Drive, Suite 2 Dothan, Alabama	**36303**
(Address of principal executive offices)	**(Zip Code)**

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

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

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

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 ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large Accelerated Filer	☒	Accelerated Filer	☐
Non-accelerated Filer	☐	Smaller Reporting Company	☐
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. ☐

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

As of August 4, 2023, the registrant had 43,728,310 shares of Class A common stock, $0.001 par value, and 8,998,511 shares of Class B common stock, $0.001 par value, outstanding.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained in this Quarterly Report on Form 10-Q constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including, among other things, statements related to future events, business strategy, future performance, future operations, backlog, financial position, estimated revenues and losses, projected costs, prospects, plans and objectives of management. All statements other than statements of historical fact may be forward-looking statements. Forward-looking statements are often, but not always, identified by the use of words such as "seek," "anticipate," "plan," "continue," "estimate," "expect," "may," "will," "project," "predict," "potential," "targeting," "intend," "could," "might," "should," "believe," "outlook" and variations of such words or their negative and similar expressions. Forward-looking statements should not be read as a guarantee of future performance or results, and may not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. Forward-looking statements are based on management's belief, based on currently available information, as to the outcome and timing of future events. These statements involve estimates, assumptions, known and unknown risks, uncertainties and other factors that may cause actual results or events to differ materially from those expressed in such forward-looking statements. When evaluating forward-looking statements, you should consider the risk factors and other cautionary statements described in this Quarterly Report on Form 10-Q and under the heading "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022. We believe the expectations reflected in the forward-looking statements contained in this report are reasonable, but no assurance can be given that these expectations will prove to be correct. Forward-looking statements should not be unduly relied upon.

Important factors that could cause actual results or events to differ materially from those expressed in forward-looking statements include, but are not limited to:

- 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 inquiries, requirements and initiatives, including those related to funding for public infrastructure construction, land use, environmental, health and safety matters, and government contracting requirements and other laws and regulations;
- unfavorable economic conditions and restrictive financing markets;
- our ability to successfully identify, manage and integrate acquisitions;
- 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;
- climate change and related laws and regulations;
- our substantial indebtedness and the restrictions imposed on us by the terms thereof;
- our ability to manage our supply chain in a manner that ensures that we are able to obtain adequate raw materials, equipment and essential supplies;
- our ability to retain key personnel and maintain satisfactory labor relations, and to manage or mitigate any labor shortages, turnover and labor cost increases;
- the impact of inflation on costs of labor, raw materials and other items that are critical to our business, including fuel, concrete and steel;

- property damage and other claims and insurance coverage issues;
- the outcome of litigation or disputes, including employment-related, workers’ compensation and breach of contract claims;
- risks related to our information technology systems and infrastructure, including cybersecurity incidents;
- our ability to maintain effective internal control over financial reporting; and
- other events outside of our control.

These factors are not necessarily all of the important factors that could cause actual results or events to differ materially from those expressed in the forward-looking statements. Other unknown or unpredictable factors could also cause actual results or events to differ materially from those expressed in the forward-looking statements. Our future results will depend upon various other risks and uncertainties, including those described in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022. All forward-looking statements attributable to us are qualified in their entirety by this cautionary statement. Forward-looking statements speak only as of the date hereof. We undertake no obligation to update or revise any forward-looking statements after the date on which any such statement is made, whether as a result of new information, future events or otherwise, except as required by law.

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

CONSTRUCTION PARTNERS, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	June 30, 2023 (unaudited)	September 30, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 54,878	$ 35,531
Restricted cash	71	28
Contracts receivable including retainage, net	254,972	265,207
Costs and estimated earnings in excess of billings on uncompleted contracts	33,449	29,271
Inventories	88,233	74,195
Prepaid expenses and other current assets	9,694	12,957
Total current assets	441,297	417,189
Property, plant and equipment, net	502,732	481,412
Operating lease right-of-use assets	17,484	13,985
Goodwill	157,289	129,465
Intangible assets, net	21,169	15,976
Investment in joint venture	87	87
Restricted investments	13,353	6,866
Other assets	30,428	30,541
Total assets	$ 1,183,839	$ 1,095,521
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 126,745	$ 130,468
Billings in excess of costs and estimated earnings on uncompleted contracts	68,748	52,477
Current portion of operating lease liabilities	2,385	2,209
Current maturities of long-term debt	14,000	12,500
Accrued expenses and other current liabilities	28,935	28,484
Total current liabilities	240,813	226,138
Long-term liabilities:		
Long-term debt, net of current maturities and deferred debt issuance costs	405,416	363,066
Operating lease liabilities, net of current portion	15,607	12,059
Deferred income taxes, net	25,700	26,713
Other long-term liabilities	15,203	11,666
Total long-term liabilities	461,926	413,504
Total liabilities	702,739	639,642
Stockholders' equity:		
Preferred stock, par value $ 0.001; 10,000,000 shares authorized and no shares issued and outstanding at June 30, 2023 and September 30, 2022	—	—
Class A common stock, par value $ 0.001; 400,000,000 shares authorized, 43,760,546 shares issued and 43,728,310 shares outstanding at June 30, 2023 and 41,195,730 shares issued and 41,193,024 shares outstanding at September 30, 2022	44	41
Class B common stock, par value $ 0.001; 100,000,000 shares authorized, 11,921,463 shares issued and 8,998,511 shares outstanding at June 30, 2023 and 14,275,867 shares issued and 11,352,915 shares outstanding at September 30, 2022	12	15
Additional paid-in capital	264,480	256,571
Treasury stock, at cost, 32,236 shares of Class A common stock at June 30, 2023 and 2,706 shares at September 30, 2022, par value $ 0.001	(178)	(39)
Treasury stock, at cost, 2,922,952 shares of Class B common stock at June 30, 2023 and September 30, 2022, par value $ 0.001	(15,603)	(15,603)
Accumulated other comprehensive income, net	16,983	17,620
Retained earnings	215,362	197,274
Total stockholders' equity	481,100	455,879
Total liabilities and stockholders' equity	$ 1,183,839	$ 1,095,521

See notes to consolidated financial statements (unaudited).

CONSTRUCTION PARTNERS, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(unaudited in thousands, except share and per share data)

	For the Three Months Ended June 30,		For the Nine Months Ended June 30,	
	2023	2022	2023	2022
Revenues	$ 421,893	$ 380,272	$ 1,088,522	$ 908,621
Cost of revenues	357,821	336,022	967,674	818,910
Gross profit	64,072	44,250	120,848	89,711
General and administrative expenses	(32,231)	(26,584)	(93,945)	(76,530)
Gain on sale of property, plant and equipment	1,499	333	4,825	1,788
Gain on facility exchange	—	—	5,389	—
Operating income	33,340	17,999	37,117	14,969
Interest expense, net	(5,039)	(2,054)	(13,801)	(4,177)
Other income	493	178	925	337
Income before provision for income taxes	28,794	16,123	24,241	11,129
Provision for income taxes	7,117	3,955	6,153	2,868
Net income	21,677	12,168	18,088	8,261
Other comprehensive income (loss), net of tax				
Unrealized gain (loss) on interest rate swap contract, net	4,127	1,729	(625)	8,754
Unrealized loss on restricted investments, net	(129)	(154)	(12)	(276)
Other comprehensive income (loss)	3,998	1,575	(637)	8,478
Comprehensive income	$ 25,675	$ 13,743	$ 17,451	$ 16,739
Net income per share attributable to common stockholders:				
Basic	$ 0.42	$ 0.23	$ 0.35	$ 0.16
Diluted	$ 0.41	$ 0.23	$ 0.35	$ 0.16
Weighted average number of common shares outstanding:				
Basic	51,827,448	51,793,245	51,826,578	51,760,384
Diluted	52,293,846	51,888,511	52,114,438	51,928,427

See notes to consolidated financial statements (unaudited).

CONSTRUCTION PARTNERS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(unaudited in thousands, except share data)

	For the Nine Months Ended June 30, 2023									
	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Treasury Stock Class A Common Stock	Treasury Stock Class B Common Stock	Retained Earnings	Accumulated Other Comprehensive Income (Loss), net	Total Stockholders' Equity
	Shares	Amount	Shares	Amount						
September 30, 2022	41,195,730	$ 41	14,275,867	$ 15	$ 256,571	$ (39)	$ (15,603)	$ 197,274	$ 17,620	$ 455,879
Net income	—	—	—	—	—	—	—	1,892	—	1,892
Equity-based compensation expense	—	—	—	—	2,480	—	—	—	—	2,480
Issuance of stock awards	180,798	—	—	—	—	—	—	—	—	—
Purchase of treasury stock	—	—	—	—	—	(139)	—	—	—	(139)
Other comprehensive loss	—	—	—	—	—	—	—	—	(1,256)	(1,256)
December 31, 2022	41,376,528	$ 41	14,275,867	$ 15	$ 259,051	$ (178)	$ (15,603)	$ 199,166	$ 16,364	$ 458,856
Net loss	—	—	—	—	—	—	—	(5,481)	—	(5,481)
Equity-based compensation expense	—	—	—	—	2,692	—	—	—	—	2,692
Other comprehensive loss	—	—	—	—	—	—	—	—	(3,379)	(3,379)
March 31, 2023	41,376,528	$ 41	14,275,867	$ 15	$ 261,743	$ (178)	$ (15,603)	$ 193,685	$ 12,985	$ 452,688
Net income	—	—	—	—	—	—	—	21,677	—	21,677
Equity-based compensation expense	—	—	—	—	2,737	—	—	—	—	2,737
Issuance of stock awards	29,614	—	—	—	—	—	—	—	—	—
Conversion of Class B common stock to Class A common stock	2,354,404	3	(2,354,404)	(3)	—	—	—	—	—	—
Other comprehensive income	—	—	—	—	—	—	—	—	3,998	3,998
June 30, 2023	43,760,546	$ 44	11,921,463	$ 12	$ 264,480	$ (178)	$ (15,603)	$ 215,362	$ 16,983	$ 481,100

	For the Nine Months Ended June 30, 2022										
	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Treasury Stock Class A Common Stock	Treasury Stock Class B Common Stock	Retained Earnings	Accumulated Other Comprehensive Income (Loss), net	Total Stockholders' Equity
	Shares	Amount	Shares	Amount						
September 30, 2021	36,600,639	$ 37	18,614,791	$ 19	$ 248,571	$ —	$ (15,603)	$ 175,898	$ (23)	$ 408,899
Net income	—	—	—	—	—	—	—	5,511	—	5,511
Equity-based compensation expense	—	—	—	—	1,504	—	—	—	—	1,504
Issuance of stock awards	145,921	—	—	—	—	—	—	—	—	—
Purchase of treasury stock	—	—	—	—	—	(39)	—	—	—	(39)
Other comprehensive income	—	—	—	—	—	—	—	—	1,445	1,445
Conversion of Class B common stock to Class A common stock	4,338,924	4	(4,338,924)	(4)	—	—	—	—	—	—
December 31, 2021	41,085,484	$ 41	14,275,867	$ 15	$ 250,075	$ (39)	$ (15,603)	$ 181,409	$ 1,422	$ 417,320
Net loss	—	—	—	—	—	—	—	(9,418)	—	(9,418)
Equity-based compensation expense	—	—	—	—	1,742	—	—	—	—	1,742
Issuance of stock awards	107,738	—	—	—	—	—	—	—	—	—
Other comprehensive income	—	—	—	—	—	—	—	—	5,458	5,458
March 31, 2022	41,193,222	$ 41	14,275,867	$ 15	$ 251,817	$ (39)	$ (15,603)	$ 171,991	$ 6,880	$ 415,102
Net income	—	—	—	—	—	—	—	12,168	—	12,168
Equity-based compensation expense	—	—	—	—	1,848	—	—	—	—	1,848
Issuance of stock awards	2,508	—	—	—	—	—	—	—	—	—
Other comprehensive income	—	—	—	—	—	—	—	—	1,575	1,575
June 30, 2022	41,195,730	$ 41	14,275,867	$ 15	$ 253,665	$ (39)	$ (15,603)	$ 184,159	$ 8,455	$ 430,693

See notes to consolidated financial statements (unaudited).

CONSTRUCTION PARTNERS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited in thousands)

	For the Nine Months Ended June 30,	
	2023	**2022**
Cash flows from operating activities:		
Net income	$ 18,088	$ 8,261
Adjustments to reconcile net income to net cash, cash equivalents and restricted cash provided by (used in) operating activities:		
Depreciation, depletion, accretion and amortization of long-lived assets	57,769	50,291
Amortization of deferred debt issuance costs and debt discount	225	198
Unrealized loss (gain) on derivative instruments	1,408	(2,589)
Provision for bad debt	450	(1,077)
Gain on sale of property, plant and equipment	(4,825)	(1,788)
Gain on facility exchange	(5,389)	—
Realized losses on restricted investments	10	—
Equity-based compensation expense	7,909	5,094
Deferred income tax benefit	(145)	(193)
Other non-cash adjustments	(117)	97
Changes in operating assets and liabilities, net of acquisition:		
Contracts receivable including retainage	22,777	(71,865)
Costs and estimated earnings in excess of billings on uncompleted contracts	(3,580)	(9,487)
Inventories	(11,999)	(21,726)
Prepaid expenses and other current assets	3,214	(2,327)
Other assets	(283)	(2,893)
Accounts payable	(7,441)	30,025
Billings in excess of costs and estimated earnings on uncompleted contracts	14,159	13,379
Accrued expenses and other current liabilities	(1,741)	(6,946)
Other long-term liabilities	4,053	3,825
Net cash provided by (used in) operating activities, net of acquisitions	94,542	(9,721)
Cash flows from investing activities:		
Purchases of property, plant and equipment	(79,046)	(52,236)
Proceeds from sale of property, plant and equipment	12,640	4,184
Proceeds from facility exchange	36,987	—
Proceeds from restricted investments	1,403	—
Business acquisitions, net of cash acquired	(82,740)	(102,893)
Purchase of restricted investments	(7,882)	(7,662)
Net cash used in investing activities	(118,638)	(158,607)
Cash flows from financing activities:		
Net proceeds from revolving credit facility	38,000	142,300
Proceeds from issuance of long-term debt, net of debt issuance costs and discount	15,000	—
Repayments of long-term debt	(9,375)	(5,000)
Purchase of treasury stock	(139)	(39)
Net cash provided by financing activities	43,486	137,261
Net change in cash, cash equivalents and restricted cash	19,390	(31,067)
Cash, cash equivalents and restricted cash:		
Cash, cash equivalents and restricted cash, beginning of period	35,559	57,251
Cash, cash equivalents and restricted cash, end of period	$ 54,949	$ 26,184
Supplemental cash flow information:		
Cash paid for interest	$ 14,319	$ 5,727
Cash paid for income taxes	$ 1,021	$ 1,372
Operating lease right-of-use assets obtained in exchange for operating lease liabilities	$ 5,417	$ 6,209
Cash paid for operating lease liabilities	$ 1,802	$ 1,783
Non-cash items:		
Property, plant and equipment included with accounts payable at period end	$ 2,078	$ 1,236
Amounts payable to seller in business combination	$ —	$ 600

See notes to consolidated financial statements (unaudited).

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (unaudited)

Note 1 - General

Business Description

Construction Partners, Inc. (the “Company”) is a civil infrastructure company that specializes in the construction and maintenance of roadways across Alabama, Florida, Georgia, North Carolina, South Carolina and Tennessee. Through its wholly-owned subsidiaries, the Company provides a variety of products and services to both public and private infrastructure projects, with an emphasis on highways, roads, bridges, airports and commercial and residential developments. The Company’s primary operations consist of (i) manufacturing and distributing hot mix asphalt (“HMA”) for both internal use and sales to third parties in connection with construction projects, (ii) paving activities, including the construction of roadway base layers and application of asphalt pavement, (iii) site development, including the installation of utility and drainage systems, (iv) mining aggregates, such as sand, gravel and construction stone, that are used as raw materials in the production of HMA and for sales to third parties, and (v) distributing liquid asphalt cement for both internal use and sales to third parties in connection with HMA production.

The Company was formed as a Delaware corporation in 2007 as a holding company to facilitate an acquisition growth strategy in the HMA paving and construction industry. SunTx Capital Partners (“SunTx”), a private equity firm based in Dallas, Texas, together with its principals and their respective affiliates and family members, has owned a controlling interest in the Company’s stock since the Company’s inception.

Seasonality

The use and consumption of the Company’s products and services fluctuate due to seasonality. The Company’s products are used, and its construction operations and production facilities are located, outdoors. Therefore, seasonal changes and other weather-related conditions, in particular, extended snowy, rainy or cold weather in the winter, spring or fall and major weather events, such as hurricanes, tornadoes, tropical storms and heavy snows, can adversely affect the Company’s business and operations through a decline in both the use of the Company’s products and demand for the Company’s services. In addition, construction materials production and shipment levels follow activity in the construction industry, which typically occurs in the spring, summer and fall. The first and second quarters of the Company’s fiscal year typically have lower levels of activity due to less favorable weather conditions. Warmer and drier weather during the Company’s third and fourth fiscal quarters typically result in higher activity and revenues during those quarters.

Note 2 - Significant Accounting Policies

Basis of Presentation

These consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation. These interim consolidated statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”), which permit reduced disclosure for interim periods. The Company's Consolidated Balance Sheets as of September 30, 2022 were derived from the Company's audited financial statements for the fiscal year then ended, but do not include all necessary disclosures required by accounting principles generally accepted in the United States of America (“GAAP”) with respect to annual financial statements. In the opinion of management, these unaudited consolidated financial statements include all recurring adjustments and normal accruals necessary for a fair presentation of the Company’s financial position, results of operations and cash flows for the dates and periods presented. These consolidated financial statements and accompanying notes should be read in conjunction with the Company’s audited annual consolidated financial statements and notes thereto included in its Annual Report on Form 10-K for the fiscal year ended September 30, 2022 (the “2022 Form 10-K”). Results for interim periods are not necessarily indicative of the results to be expected for a full fiscal year or for any future period.

Management’s Estimates

The preparation of the consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the recorded amounts of assets, liabilities, stockholders’ equity, revenues and expenses during the reporting period, and the disclosure of contingent liabilities at the date of the consolidated financial statements. Estimates are used in accounting for items such as recognition of revenues and cost of revenues, investments, mineral reserves, goodwill and other intangible assets, business acquisitions, valuation of operating lease right-of-use assets, allowance for doubtful accounts, valuation allowances related to income taxes, accruals for potential liabilities related to lawsuits or insurance claims, asset retirement obligations, valuation of derivative instruments and valuation of equity-based compensation awards. Estimates are continually evaluated based on historical information and actual experience; however, actual results could differ from these estimates.

A description of certain critical accounting policies of the Company is presented below. Additional critical accounting policies and the underlying judgments and uncertainties are described in the notes to the Company's annual consolidated financial statements included in the 2022 Form 10-K.

Cash and Cash Equivalents

Cash consists principally of currency on hand and demand deposits at commercial banks. Cash equivalents are short-term, highly liquid investments that are both readily convertible to known amounts of cash and are so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. Cash equivalents include investments with original maturities of three months or less. The Company maintains demand accounts, money market accounts and certificates of deposit at several banks. From time to time, account balances have exceeded the maximum available federal deposit insurance coverage limit. The Company has not experienced any losses in such accounts and regularly monitors its credit risk.

Restricted Cash

Construction Partners Risk Management, Inc. (the "Captive"), a captive insurance company and wholly-owned subsidiary of the Company, provides general liability, automobile liability and workers' compensation insurance coverage to the Company and its subsidiaries. Restricted cash represents cash held in a fiduciary capacity by the Captive for the payment of casualty insurance claims. The Company had restricted cash of $0.1 million at June 30, 2023 and at September 30, 2022.

Restricted Investments

The Company's restricted investments consist of debt securities, which are held in a fiduciary capacity by the Captive for the payment of casualty insurance claims. The Company determines the classification of its securities at the time of purchase and re-evaluates the determination at each balance sheet date. The Company has classified securities held by the Captive as available-for-sale. As a result, these securities are carried at their fair value. Purchases and sales of debt securities are recorded on the trade date. Interest income on debt securities is recorded when earned using an effective yield method. Unrealized gains and losses are reported as components of accumulated other comprehensive income, net. These securities have been classified as non-current assets based on their respective maturity dates and the Company's intent to reinvest sales proceeds into new restricted investments. The Company had restricted investments of $13.4 million and $6.9 million at June 30, 2023 and September 30, 2022, respectively.

The Company evaluates its available-for-sale debt securities quarterly to determine whether there has been a decline in the fair value below the amortized cost due to credit losses or other factors. This evaluation process entails judgement by the Company, and considers factors including the issuer's financial condition and near-term prospects, future economic conditions, interest rate changes and changes in the rating of the security. When the Company has determined that it intends to sell, or that it is more likely than not that the Company will be required to sell, a security before it recovers its amortized cost basis above fair value, the individual security is written down to fair value, with a corresponding charge to "Other income" within the Consolidated Statements of Comprehensive Income (Loss). For available-for-sale debt securities that do not meet the intent impairment criteria but for which the Company has determined that a credit loss exists, the present value of cash flows expected to be collected from the security is compared to the amortized cost basis of the security. If the present value of cash flows expected to be collected is less than the amortized cost basis, a credit loss allowance is recorded for the credit loss, limited by the amount by which the fair value is less than the amortized cost basis. For the nine months ended June 30, 2023 and 2022, the Company had no intent impairments or credit losses.

Contracts Receivable Including Retainage, Net

Contracts receivable are generally based on amounts billed and currently due from customers, amounts currently due but unbilled, and amounts retained by customers pending completion of a project. It is common in the Company's industry for a small portion of either progress billings or the contract price, typically 10%, to be withheld by the customer until the Company completes a project to the satisfaction of the customer in accordance with the applicable contract terms. Such amounts, defined as retainage, represent a contract asset and are included on the Consolidated Balance Sheets as "Contracts receivable including retainage, net." Billings for such retainage balances are generally collected within one year of the completion of the project.

Contracts receivable including retainage, net is stated at the amount management expects to collect from outstanding balances. Management provides for uncollectible accounts through a charge to earnings and a credit to the allowance for doubtful accounts based on its assessment of the current status of individual accounts, type of service performed, current economic conditions, historical losses and other information available to management. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for doubtful accounts and an adjustment to the contract receivable.

Contract Assets and Contract Liabilities

Billing practices for the Company’s contracts are governed by the contract terms of each project based on (i) progress toward completion approved by the owner, (ii) achievement of milestones or (iii) pre-agreed schedules. Billings do not necessarily correlate with revenues recognized under the cost-to-cost input method (formerly known as the percentage-of-completion method). The Company records contract assets and contract liabilities to account for these differences in timing.

The contract asset, “Costs and estimated earnings in excess of billings on uncompleted contracts,” arises when the Company recognizes revenues for services performed under its construction projects, but the Company is not yet entitled to bill the customer under the terms of the contract. Amounts billed to customers are excluded from this asset and reflected on the Consolidated Balance Sheets as “Contracts receivable including retainage, net.” Included in costs and estimated earnings in excess of billings on uncompleted contracts are amounts the Company seeks or will seek to collect from customers or others for (i) errors, (ii) changes in contract specifications or design, (iii) contract change orders in dispute, unapproved as to scope and price, or (iv) other customer-related causes of unanticipated additional contract costs (such as claims). Such amounts are recorded to the extent that the amount can be reasonably estimated and recovery is probable. Claims and unapproved change orders made by the Company may involve negotiation and, in rare cases, litigation. Unapproved change orders and claims also involve the use of estimates, and revenues associated with unapproved change orders and claims are included in the transaction price for which it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty is resolved. The Company did not recognize any material amounts associated with claims and unapproved change orders during the periods presented.

The contract liability, “Billings in excess of costs and estimated earnings on uncompleted contracts,” represents the Company’s obligation to transfer goods or services to a customer for which the Company has been paid by the customer or for which the Company has billed the customer under the terms of the contract. Revenue for future services reflected in this account are recognized, and the liability is reduced, as the Company subsequently satisfies the performance obligation under the contract.

Costs and estimated earnings in excess of billings on uncompleted contracts and billings in excess of costs and estimated earnings on uncompleted contracts are typically resolved within one year and are not considered significant financing components.

Concentration of Risks

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of contracts receivable including retainage. In the normal course of business, the Company provides credit to its customers and does not generally require collateral. The Company monitors concentrations of credit risk associated with these receivables on an ongoing basis. The Company has not historically experienced significant credit losses, due primarily to management’s assessment of customers’ credit ratings. The Company principally deals with recurring customers, state and local governments and well-known local companies whose reputations are known to management. The Company performs credit checks for significant new customers and generally requires progress payments for significant projects. The Company generally has the ability to file liens against the property if payments are not made on a timely basis. No single customer accounted for more than 10% of the Company’s contracts receivable including retainage, net balance at June 30, 2023 or September 30, 2022.

Projects performed for various departments of transportation accounted for38.6% and 43.7% of consolidated revenues for the three months ended June 30, 2023 and 2022, respectively, and for 32.0% and 37.2% of consolidated revenues for the nine months ended June 30, 2023 and 2022, respectively.Customers that accounted for more than 10% of consolidated revenues during the three and nine months ended June 30, 2023 and 2022 are presented below:

	% of Consolidated Revenues			
	For the Three Months Ended June 30,		For the Nine Months Ended June 30,	
	2023	2022	2023	2022
Alabama Department of Transportation	*	14.4%	*	10.9%
North Carolina Department of Transportation	11.2%	13.6%	*	10.3%
Florida Department of Transportation	11.2%	*	10.2%	10.4%

* Less than 10%

Revenues from Contracts with Customers

The Company derives revenues from contracts with its customers, predominantly by performing construction services for both public and private infrastructure projects, with an emphasis on highways, roads, bridges, airports and commercial and residential developments. These projects are performed for a mix of federal, state, municipal and private customers. In addition, the Company generates revenues from the sale of construction materials, including HMA, aggregates, liquid asphalt and ready-mix concrete, to third-party public and private customers pursuant to contracts with those customers. The following table reflects, for the periods presented, the percentage of (i) revenues generated from public infrastructure construction projects and the sale of construction materials to public customers and (ii) revenues generated from private infrastructure construction projects and the sale of construction materials to private customers.

	% of Consolidated Revenues			
	For the Three Months Ended June 30,		For the Nine Months Ended June 30,	
	2023	2022	2023	2022
Private	36.8 %	36.6 %	39.0 %	38.8 %
Public	63.2 %	63.4 %	61.0 %	61.2 %

Revenues derived from construction projects are recognized over time as the Company satisfies its performance obligations by transferring control of the asset created or enhanced by the project to the customer. Recognition of revenues and cost of revenues for construction projects requires significant judgment by management, including, among other things, estimating total costs expected to be incurred to complete a project and measuring progress toward completion. Management reviews contract estimates regularly to assess revisions of estimated costs to complete a project and measurement of progress toward completion.

Management believes the Company maintains reasonable estimates based on prior experience; however, many factors contribute to changes in estimates of contract costs. Accordingly, estimates made with respect to uncompleted projects are subject to change as each project progresses and better estimates of contract costs become available. All contract costs are recorded as incurred, and revisions to estimated total costs are reflected as soon as the obligation to perform is determined. Provisions are recognized for the full amount of estimated losses on uncompleted contracts whenever evidence indicates that the estimated total cost of a contract exceeds its estimated total revenue, regardless of the stage of completion. When the Company incurs additional costs related to work performed by subcontractors, the Company may be able to utilize contractual provisions to back charge the subcontractors for those costs. A reduction to costs related to back charges is recognized when estimated recovery is probable and the amount can be reasonably estimated. Contract costs consist of (i) direct costs on contracts, including labor, materials, and amounts payable to subcontractors and (ii) indirect costs related to contract performance, such as insurance, employee benefits, and equipment (primarily depreciation, fuel, maintenance and repairs).

Progress toward completion is estimated using the input method, measured by the relationship of total cost incurred through the measurement date to total estimated costs required to complete the project (cost-to-cost method). The Company believes this method best depicts the transfer of goods and services to the customer because it represents satisfaction of the Company's performance obligation under the contract, which occurs as the Company incurs costs. The Company measures percentage of completion based on the performance of a single performance obligation under its construction projects. Each of the Company's construction contracts represents a single performance obligation to complete a defined construction project. This is because goods and services promised for delivery to a customer are not distinct, as the customer cannot benefit from any individual portion of the services on its own. All deliverables under a contract are part of a project defined by a customer and represent a series of integrated goods and services that have the same pattern of delivery to the customer and use the same measure of progress toward satisfaction of the performance obligation as the customer's asset is created or enhanced by the Company. The Company's obligation is not satisfied until the entire project is complete.

Revenue recognized during a reporting period is based on the cost-to-cost input method applied to the total transaction price, including adjustments for variable consideration, such as liquidated damages, penalties or bonuses, related to the timeliness or quality of project performance. The Company includes variable consideration in the estimated transaction price at the most likely amount to which the Company expects to be entitled or the most likely amount the Company expects to incur, in the case of liquidated damages or penalties. Such amounts are included in the transaction price for which it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty is resolved. The Company accounts for changes to the estimated transaction price using a cumulative catch-up adjustment.

The majority of the Company's public construction contracts are fixed unit price contracts. Under fixed unit price contracts, the Company is committed to providing materials or services required by a contract at fixed unit prices (for example, dollars per ton of asphalt placed). The Company's private customer contracts are primarily fixed total price contracts, also known as lump sum contracts, which require that the total amount of work be performed for a single price. Contract cost is recorded as incurred, and revisions in contract revenue and cost estimates are reflected in the accounting period when known. Changes in job performance, job conditions and estimated profitability, including those changes arising from contract change orders, penalty provisions and final contract settlements, may result in revisions to estimated revenues and costs and are recognized in the period in which the revisions are determined.

Change orders are modifications of an original contract that effectively change the existing provisions of the contract and become part of the single performance obligation that is partially satisfied at the date of the contract modification. This is because goods and services promised under change orders are generally not distinct from the remaining goods and services under the existing contract, due to the significant integration of services performed in the context of the contract. Accordingly, change orders are generally accounted for as a modification of the existing contract and single performance obligation. The Company accounts for the modification using a cumulative catch-up adjustment. Either the Company or its customers may initiate change orders, which may include changes in specifications or designs, manner of performance, facilities, equipment, materials, sites and period of completion of the work.

Revenues derived from the sale of HMA, aggregates, ready-mix concrete, and liquid asphalt are recognized at a point in time, which is when control of the product is transferred to the customer. Generally, that point in time is when the customer accepts delivery at its facility or receives product in its own transport vehicles from one of the Company’s HMA plants or aggregates facilities. Upon purchase, the Company generally provides an invoice or similar document detailing the goods transferred to the customer. The Company generally offers payment terms customary in the industry, which typically require payment ranging from point-of-sale to 30 days following purchase.

Income Taxes

The provision for income taxes includes federal and state income taxes. Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial statement carrying values and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the fiscal years in which the temporary differences are expected to be reversed or settled. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date. Management evaluates the realization of deferred tax assets and establishes a valuation allowance when it is more likely than not that all or a portion of the deferred tax assets will not be realized. Deferred tax assets and deferred tax liabilities are presented on a net basis by taxing authority and classified as non-current on the Consolidated Balance Sheets.

Earnings per Share

Basic net income per share attributable to common stockholders is computed by dividing net income attributable to common stockholders by the weighted average number of common shares outstanding during the period. Diluted net income per common share attributable to common stockholders is the same as basic net income per share attributable to common stockholders, but includes dilutive unvested stock awards using the treasury stock method.

Fair Value Measurements

The Company measures and discloses certain financial assets and liabilities at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Inputs used to measure fair value are classified using the following hierarchy:

Level 1. Unadjusted quoted prices in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.

Level 2. Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly through corroboration with observable market data.

Level 3. Inputs are unobservable for the asset or liability and include situations in which there is little, if any, market activity for the asset or liability. The inputs used in the determination of fair value are based on the best information available under the circumstances and may require significant management judgment or estimation.

The Company endeavors to utilize the best available information in measuring fair value.

The Company’s financial instruments include cash and cash equivalents, restricted cash, contracts receivable including retainage, accounts payable and accrued expenses reflected as current assets and current liabilities on its Consolidated Balance Sheets at June 30, 2023 and September 30, 2022. Due to the short-term nature of these instruments, management considers their carrying value to approximate their fair value.

The Company also has debt securities reflected as restricted investments on its Consolidated Balance Sheets at June 30, 2023 and September 30, 2022. These investments are adjusted to fair value at each balance sheet date and are considered Level 2 fair value measurements.

The Company also has a Term Loan and a Revolving Credit Facility, as each are defined and further described in Note 8 - Debt. The carrying value of amounts outstanding under these credit facilities is reflected as long-term debt, net of current maturities and deferred debt issuance cost and current maturities of long-term debt on the Company’s Consolidated Balance Sheets at June 30, 2023 and September 30, 2022. Due to the variable rate or short-term nature of these instruments, management considers their carrying value to approximate their fair value.

The Company also has derivative instruments. The fair value of commodity and interest rate swaps are based on forward and spot prices, as described in Note 16 - Fair Value Measurements.

Level 3 fair values are used to value acquired mineral reserves and leased mineral interests. The fair values of mineral reserves and leased mineral interests are determined using an excess earnings approach, which requires management to estimate future cash flows. The estimate of future cash flows is based on available historical information and forecasts determined by management, but is inherently uncertain. Key assumptions in estimating future cash flows include sales price, volumes and expected profit margins, net of capital requirements. The present value of the projected net cash flows represents the fair value assigned to mineral reserves and mineral interests. The discount rate is a significant assumption used in the valuation model and is based on the required rate of return that a hypothetical market participant would assume if purchasing the acquired business.

Management applies fair value measurement guidance to its impairment analysis for tangible and intangible assets, including goodwill.

Comprehensive Income

The Company reports comprehensive income in its Consolidated Statements of Comprehensive Income and Consolidated Statements of Stockholders’ Equity. Comprehensive income comprises two subsets: net income and other comprehensive income (“OCI”). OCI includes adjustments for changes in fair value of an interest rate swap contract derivative and available-for-sale restricted investments. For additional information about comprehensive income, see Note 19 - Other Comprehensive Income.

Note 3 - Accounting Standards

The Company did not adopt any new accounting standards or updates during the nine months ended June 30, 2023.

Note 4 - Business Acquisitions

Tennessee Acquisition - Provisional

On November 18, 2022, the Company acquired three HMA manufacturing plants and certain related assets located in the Nashville, Tennessee metro area for $9.5 million. In connection with this transaction, the Company disposed of a quarry in North Carolina, resulting in total cash proceeds of $37.0 million and a gain on the facility exchange of $5.4 million.

North Carolina Acquisition - Provisional

On December 1, 2022, the Company acquired all of the capital stock of Ferebee Corporation, an HMA manufacturing and paving company headquartered in Charlotte, North Carolina for $67.3 million. The transaction established the Company’s second platform company in North Carolina and added three HMA plants in the greater Charlotte/Rock Hill metro area.

South Carolina Acquisition - Provisional

On April 3, 2023, the Company acquired substantially all of the assets of Pickens Construction, Inc., an asphalt paving company headquartered in Anderson, South Carolina, for $5.0 million. The transaction added an HMA plant in the greater Greenville, South Carolina metro area.

Alabama Acquisition - Provisional

On May 1, 2023, the Company acquired the Huntsville, Alabama operations of Southern Site Contractors, LLC., an excavation, grading and utility contractor, for $1.1 million. The transaction enhanced the Company's vertical integration of construction services in the Huntsville, Alabama metro area.

Combined Acquisitions During the Nine Months Ended June 30, 2023

The foregoing acquisitions were accounted for as business combinations in accordance with Accounting Standards Codification ("ASC") Topic 805, Business Combinations ("Topic 805"). As of June 30, 2023, the purchase price allocation has not yet been finalized due to the recent timing of these acquisitions, as certain information was pending on such date to finalize estimates of fair value of certain assets acquired and liabilities assumed. The Company consulted with independent third parties to assist in the valuation process. The Company expects to finalize these values as soon as practicable and no later than one year from their respective acquisition dates.

Identifiable assets acquired and liabilities assumed were recorded at their estimated fair values based on the methodology described under Fair Value Measurements in Note 2 - Significant Accounting Policies. The amount of the purchase price exceeding the net fair value of identifiable assets acquired and liabilities assumed was recorded as provisional goodwill in the amount of approximately $27.0 million, which is deductible for income tax purposes. Goodwill primarily represents the assembled work force and synergies expected to result from the acquisitions. Upon finalizing the accounting for these transactions, management expects to ascribe value to other identifiable intangible assets, including customer relationships and customer backlog, which will reduce the provisional amount allocated to goodwill.

Total consideration transferred for these acquisitions was $82.9 million, which was paid from available cash, proceeds from the exchange of the North Carolina facility and a draw from the Revolving Credit Facility (as defined in Note 8 - Debt). The total consideration has been provisionally allocated as follows: $10.4 million of net working capital, $39.4 million of property, plant and equipment, $6.1 million of various intangible assets and $27.0 million of goodwill.

The Consolidated Statements of Comprehensive Income include $26.4 million of revenue and $0.3 million of net income attributable to the operations of these acquisitions for the three months ended June 30, 2023 and $48.4 million of revenue and $0.6 million of net loss attributable to the operations of these acquisitions for the nine months ended June 30, 2023 from their respective acquisition dates. The Company recorded certain costs to effect the acquisitions as they were incurred, which are reflected in general and administrative expenses on the Company's Consolidated Statements of Comprehensive Income in the amount of $0.1 million for the three months ended June 30, 2023 and $0.3 million for the nine months ended June 30, 2023.

The following presents pro forma revenues and net income as though the acquisitions had occurred on October 1, 2021 (unaudited, in thousands):

	For the Three Months Ended June 30,	
	2023	2022
Pro forma revenues	$ 422,438	$ 407,264
Pro forma net income	$ 21,779	$ 12,423

	For the Nine Months Ended June 30,	
	2023	2022
Pro forma revenues	$ 1,107,412	$ 975,910
Pro forma net income	$ 18,997	$ 8,324

Pro forma financial information is presented as if the operations of the acquisitions had been included in the consolidated results of the Company since October 1, 2021, and gives effect to transactions that are directly attributable to the acquisitions, including adjustments to:

(a) include the pro forma results of operations of the acquisitions for the three and nine months ended June 30, 2023 and 2022;

(b) include additional depreciation and depletion expense related to the fair value of acquired property, plant and equipment and reserves at aggregates facilities, as applicable, as if such assets were acquired on October 1, 2021 and consistently applied to the Company's depreciation and depletion methodologies;

(c) include interest expense as if the funds borrowed to finance the purchase prices were borrowed on October 1, 2021 (interest expense calculations further assume that no principal payments were made during the period from October 1, 2021 through June 30, 2023, and that the interest rate in effect on the date the Company made the acquisitions was in effect for the period from October 1, 2021 through June 30, 2023); and

(d) exclude $0.3 million of acquisition-related expenses from the three and nine months ended June 30, 2023, as though such expenses were incurred prior to the pro forma acquisition date of October 1, 2021.

Pro forma information is presented for informational purposes and may not be indicative of revenue or net loss that would have been recorded if these acquisitions had occurred on October 1, 2022.

Measurement Period Adjustments

During the nine months ended June 30, 2023, the Company made measurement period adjustments to previous year acquisitions, which resulted in a corresponding net increase to goodwill of $3.2 million.

Note 5 - Contracts Receivable Including Retainage, Net

Contracts receivable including retainage, net consisted of the following at June 30, 2023 and September 30, 2022 (in thousands):

	June 30, 2023 (unaudited)	September 30, 2022
Contracts receivable	$ 208,586	$ 221,566
Retainage	47,285	44,253
	255,871	265,819
Allowance for doubtful accounts	(899)	(612)
Contracts receivable including retainage, net	$ 254,972	$ 265,207

Retainage receivables have been billed, but are not due until contract completion and acceptance by the customer.

Note 6 - Contract Assets and Liabilities

Costs and estimated earnings compared to billings on uncompleted contracts at June 30, 2023 and September 30, 2022 consisted of the following (in thousands):

	June 30, 2023 (unaudited)	September 30, 2022
Costs on uncompleted contracts	$ 1,635,361	$ 1,520,510
Estimated earnings to date on uncompleted contracts	158,966	146,459
	1,794,327	1,666,969
Billings to date on uncompleted contracts	(1,829,626)	(1,690,175)
Net billings in excess of costs and estimated earnings on uncompleted contracts	$ (35,299)	$ (23,206)

Significant changes to balances of costs and estimated earnings in excess of billings (contract asset) and billings in excess of costs and estimated earnings (contract liability) on uncompleted contracts from September 30, 2022 to June 30, 2023 are presented below (in thousands):

	Costs and Estimated Earnings in Excess of Billings on Uncompleted Contracts	Billings in Excess of Costs and Estimated Earnings on Uncompleted Contracts	Net Billings in Excess of Costs and Estimated Earnings on Uncompleted Contracts
September 30, 2022	$ 29,271	$ (52,477)	$ (23,206)
Changes in revenue billed, contract price or cost estimates	4,178	(16,270)	(12,093)
June 30, 2023 (unaudited)	$ 33,449	$ (68,748)	$ (35,299)

Note 7 - Property, Plant and Equipment

Property, plant and equipment at June 30, 2023 and September 30, 2022 consisted of the following (in thousands):

	June 30, 2023 (unaudited)	September 30, 2022
Construction equipment	$ 448,736	$ 402,581
Plants	187,514	167,625
Mineral reserves	69,405	91,992
Land and improvements	69,892	59,454
Buildings	32,682	32,566
Furniture and fixtures	7,383	7,110
Leasehold improvements	1,268	1,230
Total property, plant and equipment, gross	816,880	762,558
Accumulated depreciation, depletion and amortization	(349,289)	(304,935)
Construction in progress	35,141	23,789
Total property, plant and equipment, net	$ 502,732	$ 481,412

Depreciation, depletion and amortization expense related to property, plant and equipment was $20.2 million and $17.6 million for the three months ended June 30, 2023 and 2022, respectively, and $59.9 million and $50.4 million for the nine months ended June 30, 2023 and 2022, respectively.

Note 8 - Debt

The Company maintains credit facilities to finance acquisitions, to fund the purchase of real estate, construction equipment, plants and other fixed assets and for general working capital purposes. Debt at June 30, 2023 and September 30, 2022 consisted of the following (in thousands):

	June 30, 2023 (unaudited)	September 30, 2022
Long-term debt:		
Term Loan	$ 277,500	$ 271,875
Revolving Credit Facility	143,100	105,100
Total long-term debt	420,600	376,975
Deferred debt issuance costs	(1,184)	(1,409)
Current maturities of long-term debt	(14,000)	(12,500)
Long-term debt, net of current maturities	$ 405,416	$ 363,066

Since 2017, the Company and each of its subsidiaries have been parties to a credit agreement with PNC Bank, National Association (successor in interest to BBVA USA) and certain other lenders party from time to time thereto. The credit agreement has been amended and restated on multiple occasions since its inception in order to provide for changes in the economic terms of the credit facility and developments at the Company.

On June 30, 2022, the Company and each of its subsidiaries entered into a Third Amended and Restated Credit Agreement with PNC Bank, National Association, as administrative agent and lender, PNC Capital Markets LLC, as joint lead arranger and sole bookrunner, Regions Bank and BofA Securities, Inc., each as a joint arranger, and certain other lenders (as amended and restated, the "Credit Agreement"). The Credit Agreement provides for (i) a term loan facility in an initial aggregate principal amount of $250.0 million (the "Term Loan") the full amount of which was drawn at closing, (ii) a revolving credit facility in an initial aggregate principal amount of $325.0 million (the "Revolving Credit Facility"), and (iii) a delayed draw term loan facility in an initial aggregate principal amount of $50.0 million (the "Delayed Draw Term Loan"). Among other things, the proceeds of the Term Loan were used to refinance indebtedness of the Company and its subsidiaries under its prior credit facility.

All outstanding advances under the Term Loan and Revolving Credit Facility are due and payable in full on June 30, 2027 (the "Maturity Date"). The Term Loan (commencing on September 30, 2022) and the Delayed Draw Term Loan (commencing on the earliest of (i) December 31, 2023, or (ii) the last day of the fiscal quarter in which the commitments under the Delayed Draw Term Loan are fully drawn or terminated, as applicable) will amortize in quarterly installments in an amount (subject, in each case, to adjustments for prior mandatory and voluntary prepayments of principal) equal to: (a) 1.25% of the original principal amount of the Term Loan (and, to the extent any Delayed Draw Term Loans are then outstanding, the original principal amount of such loans) and continuing on each of the following eleven quarter-end payment dates; (b) 1.875% of the original principal amount of the Term Loan (and, to the extent any Delayed Draw Term Loans are then outstanding, the original principal amount of such loans) on each of the next eight quarter-end payment dates; and (c) all remaining principal of the Term Loan and the Delayed Draw Term Loans are due and payable in full on the Maturity Date. The annual interest rates applicable to advances will be calculated, at the Company's option, by using either a base rate, Daily Simple SOFR plus 0.10%, or Term SOFR plus 0.10%, and in each case, plus an applicable margin percentage that corresponds to the Company's consolidated net leverage ratio. Subject to various requirements, the Company generally may (and, under certain circumstances, must) prepay all or a portion of the outstanding balance of the advances, together with accrued interest thereon, prior to their contractual maturity. The obligations of the Company and its subsidiaries under the Credit Agreement are secured by a first priority security interest in substantially all of the Company's assets.

At June 30, 2023 and September 30, 2022, there was $277.5 million and $271.9 million, respectively, of principal outstanding under the Term Loan, $143.1 million and $105.1 million, respectively, of principal outstanding under the Revolving Credit Facility, and availability of $171.9 million and $208.6 million, respectively, under the Revolving Credit Facility, including a reduction for outstanding letters of credit. The Company also had $10.0 million and $25.0 million available under the Delayed Draw Term Loan at June 30, 2023 and September 30, 2022, respectively.

The Credit Agreement contains customary negative covenants for agreements of this type, including, but not limited to, restrictions on the Company's ability to make acquisitions, make loans or advances, make capital expenditures and investments, pay dividends, create or incur indebtedness, create liens, wind up or dissolve, consolidate, merge or liquidate, or sell, transfer or dispose of assets. The Credit Agreement also requires the Company to satisfy certain financial covenants, including a minimum fixed charge coverage ratio of 1.20-to-1.00 and a maximum consolidated leverage ratio of 3.50-to-1.00, subject to certain adjustments. At June 30, 2023 and September 30, 2022, the Company's fixed charge coverage ratio was 2.00-to-1.00 and 2.56-to-1.00, respectively, and the Company's consolidated leverage ratio was 2.27-to-1.00 and 2.79-to-1.00, respectively. At both June 30, 2023 and September 30, 2022, the Company was in compliance with all covenants under the Credit Agreement.

From time to time, the Company has entered into interest rate swap agreements to hedge against the risk of changes in interest rates. At June 30, 2023 and September 30, 2022, the aggregate notional value of these interest rate swap agreements was $300.0 million, and the fair value was $24.5 million and $24.7 million, respectively, which is included within other assets on the Company's Consolidated Balance Sheets.

Note 9 - Equity

Shares of Class A common stock and Class B common stock are identical, except with respect to voting rights, conversion rights and transfer restrictions applicable to shares of Class B common stock. The holders of Class A common stock are entitled to one vote per share, and the holders of Class B common stock are entitled to ten votes per share. The holders of Class A common stock and Class B common stock vote together as a single class on all matters submitted to a vote of stockholders, including the election of directors, unless otherwise required by applicable law or the Company's certificate of incorporation or bylaws. Shares of Class B common stock are convertible into shares of Class A common stock at any time at the option of the holder or upon any transfer, subject to certain limited exceptions. In addition, upon the election of the holders of a majority of the then-outstanding shares of Class B common stock, all outstanding shares of Class B common stock will be converted into shares of Class A common stock. Once converted into shares of Class A common stock, shares of Class B common stock will not be reissued. Class A common stock is not convertible into any other class of the Company's capital stock.

Conversion of Class B Common Stock to Class A Common Stock

During the nine months ended June 30, 2023, certain stockholders of the Company converted a total of 2,354,404 shares of Class B common stock into shares of Class A common stock on a one-for-one basis. As of June 30, 2023, there were 43,728,310 shares of Class A common stock and 8,998,511 shares of Class B common stock outstanding.

Treasury Stock

During the nine months ended June 30, 2023, the Company received a total of 5,267 shares of Class A common stock from employees for reimbursement of income taxes paid by the Company on behalf of these employees related to the vesting of restricted stock awards and 24,263 shares of Class A common stock through forfeitures of restricted stock awards by terminated employees.

Restricted Stock Awards

During the nine months ended June 30, 2023, the Company awarded a total of210,412 restricted shares of Class A common stock to certain directors, officers and employees of the Company under the Construction Partners, Inc. 2018 Equity Incentive Plan (the "Equity Incentive Plan").

Additional information about these transactions is set forth in Note 13 - Equity-Based Compensation.

Note 10 - Earnings Per Share

As discussed in Note 9 - Equity, the Company has Class A common stock and Class B common stock. Because the only differences between the two classes of common stock are related to voting rights, conversion rights and transfer restrictions applicable to shares of Class B common stock, the Company has not presented earnings per share under the two-class method, as the earnings per share are the same for both Class A common stock and Class B common stock. The following table summarizes the weighted-average number of basic common shares outstanding and the calculation of basic earnings per share for the periods presented (unaudited in thousands, except share and per share amounts):

	For the Three Months Ended June 30,		For the Nine Months Ended June 30,	
	2023	2022	2023	2022
Numerator				
Net income attributable to common stockholders	$ 21,677	$ 12,168	$ 18,088	$ 8,261
Denominator				
Weighted average number of common shares outstanding, basic	51,827,448	51,793,245	51,826,578	51,760,384
Net income per common share attributable to common stockholders, basic	$ 0.42	$ 0.23	$ 0.35	$ 0.16

The following table summarizes the calculation of the weighted-average number of diluted common shares outstanding and the calculation of diluted earnings per share for the periods presented (unaudited in thousands, except share and per share amounts):

	For the Three Months Ended June 30,		For the Nine Months Ended June 30,	
	2023	2022	2023	2022
Numerator				
Net income attributable to common stockholders	$ 21,677	$ 12,168	$ 18,088	$ 8,261
Denominator				
Weighted average number of basic common shares outstanding, basic	51,827,448	51,793,245	51,826,578	51,760,384
Effect of dilutive securities:				
Restricted stock grants	466,398	95,266	287,860	168,043
Weighted average number of diluted common shares outstanding	52,293,846	51,888,511	52,114,438	51,928,427
Net income per diluted common share attributable to common stockholders	$ 0.41	$ 0.23	$ 0.35	$ 0.16

Note 11 - Provision for Income Taxes

The Company files a consolidated United States federal income tax return and income tax returns in various states. Management evaluated the Company's tax positions based on appropriate provisions of applicable tax laws and regulations and believes that they are supportable based on their specific technical merits and the facts and circumstances of the respective transactions.

The Company's effective income tax rate for the three months ended June 30, 2023 and 2022 was24.7% and 24.5%, respectively. The Company's effective tax rate for the nine months ended June 30, 2023 and 2022 was 25.4% and 25.8%, respectively. The changes in the Company's effective rates are due to differences in state tax rates at its operating subsidiaries.

Note 12 - Related Parties

On December 31, 2017, the Company sold an indirect wholly owned subsidiary to an immediate family member of an executive officer of the Company ("Purchaser of Subsidiary") in consideration for a note receivable in the amount of $1.0 million, which approximated the net book value of the disposed entity. At June 30, 2023, $0.1 million and $0.3 million was reflected on the Company's Consolidated Balance Sheets within other current assets and other assets, respectively, representing the remaining balances on this note receivable. In connection with this transaction, the Company also received a note receivable from the disposed entity ("Disposed Entity") on December 31, 2017 in the amount of $1.0 million representing certain accounts payable of the Disposed Entity that were paid by the Company. At June 30, 2023, $0.1 million and $0.2 million was reflected on the Company's Consolidated Balance Sheets within other current assets and other assets, respectively, representing the remaining balances on this note receivable. The notes do not bear interest, and repayments are scheduled to be made in periodic installments during fiscal year 2023 through fiscal year 2026.

Prior to its acquisition by the Company, a current subsidiary of the Company advanced funds to an entity owned by an immediate family member of an officer of the Company in connection with a land development project. The obligations of the borrower entity to repay the advances were guaranteed by a separate entity owned by the same family member of the officer. Amounts outstanding under the advances did not bear interest and matured in full in March 2021. In March 2021, the subsidiary of the Company amended and restated the terms of the repayment obligation, as a result of which the officer personally assumed the remaining balance of the obligation. No new amounts were advanced to the officer by the Company or any subsidiary or affiliate thereof in connection with the transaction. Under the amended and restated terms, the officer executed a promissory note in favor of the Company's subsidiary in the principal amount of $0.8 million. The note bears simple interest at a rate of 4.0% and requires annual minimum payments of $0.1 million inclusive of principal and accrued interest, with any remaining principal and accrued interest due and payable in full on December 31, 2027. Amounts outstanding under the note are reflected on the Company's Consolidated Balance Sheets within other current assets and other assets ("Land Development Project").

From time to time, the Company conducts or has conducted business with the following related parties:

- Entities owned by immediate family members of an executive officer of the Company perform subcontract work for a subsidiary of the Company, including trucking and grading services ("Subcontracting Services").
- Since June 1, 2014, the Company has been a party to an access agreement with Island Pond Corporate Services, LLC, which provides a location for the Company to conduct business development activities from time to time on a property owned by the Executive Chairman of the Company's Board of Directors ("Island Pond").
- The Company is party to a management services agreement with SunTx, under which the Company pays SunTx Capital Management Corp. ("SunTx") $0.31 million per fiscal quarter and reimburses certain travel and other out-of-pocket expenses associated with services rendered under the management services agreement.

The following table presents revenues earned and expenses incurred by the Company during the three and nine months ended June 30, 2023 and 2022, and accounts receivable and payable balances at June 30, 2023 and September 30, 2022, related to transactions with the related parties described above (in thousands):

	Expense Incurred				Accounts Receivable (Payable)	
	For the Three Months Ended June 30,		For the Nine Months Ended June 30,		June 30,	September 30,
	2023	2022	2023	2022	2023	2022
	(unaudited)	(unaudited)	(unaudited)	(unaudited)	(unaudited)	
Purchaser of Subsidiary	$ —	$ —	$ —	$ —	$ 414	$ 414
Disposed Entity	—	—	—	—	264	264
Land Development Project	—	—	—	—	628	712
Subcontracting Services	2,680 (1)	2,596 (1)	5,672 (1)	5,688 (1)	(679)	(695)
Island Pond	80 (2)	80 (2)	240 (2)	240 (2)	—	—
SunTx	383 (2)	370 (2)	1,109 (2)	1,129 (2)	—	—

(1) Cost is reflected as cost of revenues on the Company's Consolidated Statements of Comprehensive Income.

(2) Cost is reflected as general and administrative expenses on the Company's Consolidated Statements of Comprehensive Income.

Note 13 - Equity-Based Compensation

The Company measures and recognizes equity-based compensation expense, net of forfeitures, over the requisite vesting periods for all equity-based payment awards made and recognizes forfeitures as they occur. Equity-based compensation is included in general and administrative expenses in the Consolidated Statements of Comprehensive Income.

Restricted Stock

During the three months ended June 30, 2023 and 2022, the Company recorded $2.2 million and $1.8 million, respectively, of compensation expense in connection with restricted stock awards. During the nine months ended June 30, 2023 and 2022, the Company recorded $6.4 million and $5.1 million, respectively, of compensation expense in connection with restricted stock awards. At June 30, 2023, there was approximately $12.1 million of unrecognized compensation expense related to restricted stock awards.

Performance Stock Units

Performance stock units ("PSUs") are eligible to vest at the end of the performance period based on achievement of certain performance metrics established by the Compensation Committee of the Company's Board of Directors (the "Compensation Committee"). The preliminary number of shares of common stock issuable upon vesting of PSUs can range from 0% to 150% of the number of shares subject to the award, depending on the level of achievement, as determined by the Compensation Committee. The preliminary number of vested shares may be increased or decreased by up to 15% based on a comparison of the Company's total shareholder return over the performance period to that of the Russell 2000. The Company recognizes expense, net of estimated forfeitures, for PSUs based on the forecasted level of achievement of the applicable performance metrics, multiplied by the fair value of the total number of shares of Class A common stock underlying the PSUs that the Company anticipates will be delivered upon vesting based on such achievement.

During the three months ended June 30, 2023 and 2022, the Company recorded $0.5 million and $0.0 million, respectively, of compensation expense in connection with PSUs. During the nine months ended June 30, 2023 and 2022, the Company recorded $1.5 million and $0.0 million, respectively, of compensation expense in connection with PSUs. At June 30, 2023, there was approximately $2.6 million of unrecognized compensation expense related to PSUs.

Note 14 - Leases

The Company leases certain facilities, office space, vehicles and equipment. As of June 30, 2023, operating leases under ASC Topic 842 *Leases* ("Topic 842") were included in (i) operating lease right-of use assets, (ii) current portion of operating lease liabilities and (iii) operating lease liabilities, net of current portion on the Company's Consolidated Balance Sheets in the amounts of $17.5 million, $2.4 million and $15.6 million, respectively. As of June 30, 2023, the Company did not have any lease contracts that had not yet commenced but had created significant rights and obligations.

The components of lease expense were as follows (unaudited, in thousands):

	For the Three Months Ended June 30,	
	2023	2022
Operating lease cost	$ 817	$ 650
Short-term lease cost	5,551	5,698
Total lease expense	$ 6,368	$ 6,348

	For the Nine Months Ended June 30,	
	2023	2022
Operating lease cost	$ 2,331	$ 1,884
Short-term lease cost	16,319	13,905
Total lease expense	$ 18,650	$ 15,789

Short-term leases (those with terms of 12 months or less) are not capitalized but are expensed on a straight-line basis over the lease term. The majority of the Company's short-term leases relate to equipment used on construction projects. These leases are entered into at periodic rental rates for an unspecified duration and typically have a termination for convenience provision.

As of June 30, 2023, the weighted-average remaining term of the Company’s leases was10.8 years, and the weighted-average discount rate was3.47%. As of June 30, 2023, the lease liability was equal to the present value of the remaining lease payments, discounted using the incremental borrowing rate on the Company’s secured debt using a single maturity discount rate, as such rate is not materially different from the discount rate applied to each of the leases in the portfolio.

The following table summarizes the Company’s undiscounted lease liabilities outstanding as of June 30, 2023 (unaudited, in thousands):

Fiscal Year		Amount
Remainder of 2023	$	799
2024		2,793
2025		2,390
2026		2,273
2027		2,098
2028 and thereafter		11,574
Total future minimum lease payments	$	21,927
Less: imputed interest		3,935
Total	$	17,992

Note 15 - Investment in Derivative Instruments

Interest Rate Swap Contracts

The Company uses derivative instruments as part of its overall strategy to manage its exposure to market risks associated with fluctuations in interest rates. The Company regularly monitors the financial stability and credit standing of the counterparties to its derivative instruments. The Company does not enter into derivative financial instruments for speculative purposes.

The Company records all derivatives at fair value. On the date the derivative contract is entered into, the Company may designate the derivative as one of the following: (i) a hedge of a forecasted transaction or the variability of cash flows to be paid (“cash flow hedge”) or (ii) a hedge of the fair value of a recognized asset or liability (“fair value hedge”).

Changes in the fair value of a derivative that is qualified and designated as a cash flow hedge or net investment hedge are recorded in other comprehensive income (loss) in the Company’s Consolidated Statements of Comprehensive Income until they are reclassified into earnings in the same period or periods during which the hedged transaction affects earnings.

Changes in the fair value of a derivative that is qualified and designated as a fair value hedge, along with the gain or loss on the hedged asset or liability that is attributable to the hedged risk, are recorded in current period earnings.

If the Company does not specifically designate a derivative as one of the above, changes in the fair value of the undesignated derivative instrument are reported in current period earnings. Cash flows from designated derivative financial instruments are classified within the same category as the item being hedged in the Consolidated Statements of Cash Flows, while cash flows from undesignated derivative financial instruments are included as an investing activity.

If the Company determines that it qualifies for and will designate a derivative as a hedging instrument, the Company formally documents all relationships between hedging activities, including the risk management objective and strategy for undertaking various hedge transactions. This process includes matching all derivatives that are designated as cash flow hedges to specific forecasted transactions and linking all derivatives designated as fair value hedges to specific assets and liabilities in the Consolidated Balance Sheets.

The Company performs an initial prospective assessment of hedge effectiveness on a quantitative basis between the inception date and the earlier of the first quarterly hedge effectiveness date or the issuance of the financial statements that include the hedged transaction. On a quarterly basis, the Company assesses the effectiveness of its designated hedges in offsetting the variability in the cash flows or fair values of the hedged assets or obligations using the Hypothetical Derivative Method. The Hypothetical Derivative Method compares the change in fair value or cash flows of the hedging instrument with the change in fair value or cash flows of a hypothetical derivative that represents the hedged risk. The Company would discontinue hedge accounting prospectively when the derivative is no longer highly effective as a hedge, the underlying hedged transaction is no longer probable or the hedging instrument expires, is sold, terminated or exercised.

Commodity Swap Contracts

The Company's operations expose it to a variety of market risks, including the effects of changes in commodity prices. As part of its risk management process, the Company has entered into commodity swap transactions through regulated commodity exchanges. The Company does not enter into derivative financial instruments for speculative purposes. Changes in fair value of commodity swaps are recognized in earnings.

The following table represents the approximate amount of realized and unrealized gains (losses) and changes in fair value recognized in earnings on interest and commodity derivative contracts for the three and nine months ended June 30, 2023 and 2022 and the fair value of these derivatives as of June 30, 2023 and September 30, 2022 (in thousands):

	For the Three Months Ended June 30,					
	2023			2022		
	(unaudited)			(unaudited)		
Income Statement Classification	Realized Gain (Loss)	Change in Unrealized Gain (Loss)	Total Gain (Loss)	Realized Gain (Loss)	Change in Unrealized Gain (Loss)	Total Gain (Loss)
Cost of revenues	$ (970)	$ 878	$ (92)	$ 1,349	$ 143	$ 1,492
Interest expense, net	2,377	—	2,377	(121)	316	195
Total	$ 1,407	$ 878	$ 2,285	$ 1,228	$ 459	$ 1,687

	For the Nine Months Ended June 30,					
	2023			2022		
	(unaudited)			(unaudited)		
Income Statement Classification	Realized Gain (Loss)	Change in Unrealized Gain (Loss)	Total Gain (Loss)	Realized Gain (Loss)	Change in Unrealized Gain (Loss)	Total Gain (Loss)
Cost of revenues	$ (2,027)	$ (1,408)	$ (3,435)	$ 2,206	$ 921	$ 3,127
Interest expense, net	5,719	—	5,719	(1,030)	1,668	638
Total	$ 3,692	$ (1,408)	$ 2,284	$ 1,176	$ 2,589	$ 3,765

Balance Sheet Classification	June 30, 2023 (unaudited)	September 30, 2022
Prepaid expenses and other current assets - commodity swaps	$ 16	$ 1,032
Other assets - commodity swaps	—	155
Other assets - interest rate swaps[1]	24,478	24,719
Accrued expense and other current liabilities - commodity swaps	(898)	(601)
Other long-term liabilities - commodity swaps	—	(60)
Net unrealized gain position	$ 23,596	$ 25,245

[1] Includes designated cash flow hedge of $24,478 and $24,719 as of June 30, 2023 and September 30, 2022, respectively.

Note 16 - Fair Value Measurements

The following table presents the Company’s liabilities measured at fair value on a recurring basis as of June 30, 2023 and September 30, 2022 under ASC 820, *Fair Value Measurements* (in thousands):

	June 30, 2023	September 30, 2022
	(unaudited)	
	Level 2	Level 2
Assets:		
Commodity swap contracts	$ 16	$ 1,187
Interest rate swaps	24,478	24,719
Corporate debt securities	4,532	2,537
U.S. government securities	5,832	2,481
Municipal government securities	1,842	1,055
Agency backed securities	1,147	793
Total assets	37,847	32,772
Liabilities:		
Commodity swap contracts	$ 898	$ 661
Total liabilities	$ 898	$ 661

The fair value of interest rate swap contracts is based on a model-driven valuation using the observable components (e.g., interest rates), which are observable at commonly quoted intervals for the full term of the contracts. The fair value of the Company’s commodity swap contracts is based on an analysis of the expected cash flow of the contract in combination with observable forward price inputs obtained from a third-party pricing source. The calculations are adjusted for credit risk. Therefore, the Company’s derivative assets and liabilities are classified within Level 2 of the fair value hierarchy. Derivative assets are included within “Prepaid expenses and other current assets” and “Other assets” on the Company’s Consolidated Balance Sheets. Derivative liabilities are included within “Accrued expense and other current liabilities” and “Other long-term liabilities” on the Company’s Consolidated Balance Sheets.

Note 17 - Commitments

Letters of Credit

Under the Revolving Credit Facility, the Company has a total capacity of $325.0 million that may be used for a combination of cash borrowings and letter of credit issuances. At June 30, 2023, the Company had aggregate letters of credit outstanding in the amount of $10.0 million, primarily related to certain insurance policies as described in Note 2 - Significant Accounting Policies.

Purchase Commitments

As of June 30, 2023, the Company had unconditional purchase commitments for diesel fuel and natural gas in the normal course of business in the aggregate amount of $4.4 million. Management does not expect any significant changes in the market value of these goods during the commitment period that would have a material adverse effect on the financial condition, results of operations and cash flows of the Company. As of June 30, 2023, the Company’s purchase commitments annually thereafter were as follows (unaudited, in thousands):

Fiscal Year	Amount
Remainder of 2023	$ 1,259
2024	2,653
2025	484
Total	$ 4,396

Minimum Royalties

The Company has lease agreements associated with aggregates facilities under which the Company makes royalty payments. These agreements are outside the scope of Topic 842. The payments are generally based on tons sold in a particular period; however, certain agreements have minimum annual payments. The Company had commitments in the form of minimum royalties as of June 30, 2023 in the amount of $2.6 million, due as follows (unaudited, in thousands):

Fiscal Year	Amount
Remainder of 2023	$ 18
2024	295
2025	256
2026	192
2027	180
Thereafter	1,615
Total	$ 2,556

Royalty expense recorded in cost of revenue was $0.4 million for each of the three months ended June 30, 2023 and 2022, and $1.2 million for each of the nine months ended June 30, 2023 and 2022.

Note 18 - Restricted Investments

The following is a summary of the Company's debt securities as of June 30, 2023 and September 30, 2022 (in thousands):

	June 30, 2023 (unaudited)			
	Amortized Cost	**Gross Unrealized Gains**	**Gross Unrealized Losses**	**Fair Value**
U.S. government securities	$ 6,007	$ —	$ 175	$ 5,832
Corporate debt securities	4,774	—	242	4,532
Municipal government securities	1,928	—	86	1,842
Agency backed securities	1,225	—	78	1,147
Total	$ 13,934	$ —	$ 581	$ 13,353

	September 30, 2022			
	Amortized Cost	**Gross Unrealized Gains**	**Gross Unrealized Losses**	**Fair Value**
Corporate debt securities	$ 2,797	$ —	$ 260	$ 2,537
U.S. government securities	2,622	—	141	2,481
Municipal government securities	1,151	—	96	1,055
Agency backed securities	862	—	69	793
Total	$ 7,432	$ —	$ 566	$ 6,866

The amortized cost and fair value of debt securities classified as available for sale by contractual maturity, as of June 30, 2023, were as follows (unaudited, in thousands):

	Amortized Cost	Fair Value
Due within one year	$ 2,529	$ 2,512
Due after one year through three years	4,382	4,226
Due after three years	7,023	6,615
Total	$ 13,934	$ 13,353

Note 19 - Other Comprehensive Income

Comprehensive income comprises two subsets: net income and OCI. The components of OCI are presented in the accompanying Consolidated Statements of Comprehensive Income and Consolidated Statements of Stockholders' Equity, net of applicable taxes. The Company's interest rate swap contract hedge included in other comprehensive income was entered into on July 1, 2022 with an original notional value of $300.0 million. The maturity date of this swap is June 30, 2027. The Company received a credit of $12.6 million under the "blend and extend" arrangement utilizing the fair values of the existing interest rate swap agreements at June 30, 2022.

Amounts in accumulated other comprehensive income ("AOCI"), net of tax, at June 30, 2023 and September 30, 2022, were as follows (in thousands):

AOCI	June 30, 2023 (unaudited)	September 30, 2022
Interest rate swap contract, net of blend and extend arrangement	$ 23,206	$ 23,761
Unrealized loss on available-for-sale securities	(581)	(566)
Less net tax effect of other comprehensive income items	(5,642)	(5,575)
Total	$ 16,983	$ 17,620

Changes in AOCI, net of tax, are as follows (in thousands):

AOCI	
Balance at September 30, 2022	$ 17,620
Net OCI changes	(637)
Balance at June 30, 2023 (unaudited)	$ 16,983

AOCI	
Balance at September 30, 2021	$ (23)
Net OCI changes	8,478
Balance at June 30, 2022 (unaudited)	$ 8,455

Amounts reclassified from AOCI to earnings are as follows (unaudited, in thousands):

	For the Three Months Ended June 30,	
	2023	2022
Interest (benefit) expense	$ (2,377)	$ 55
Realized loss on restricted investments	6	—
Expense (benefit) from income taxes	612	(14)
Total reclassifications from AOCI to earnings	$ (1,759)	$ 41

	For the Nine Months Ended June 30,	
	2023	2022
Interest (benefit) expense	$ (5,719)	$ 691
Realized loss on restricted investments	10	—
Expense (benefit) from income taxes	1,473	(178)
Total reclassifications from AOCI to earnings	$ (4,236)	$ 513

Note 20 - Subsequent Events

South Carolina Acquisition

On August 1, 2023, a subsidiary of the Company acquired an HMA plant, together with the related inventory and certain equipment, of C.R. Jackson, Inc., an asphalt paving company headquartered in Myrtle Beach, South Carolina, for $9.5 million. The transaction added an HMA plant and expanded the Company’s service market in the greater Myrtle Beach, South Carolina metro area.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

This discussion and analysis of our financial condition and results of operations is intended to assist in understanding and assessing the trends and significant changes in our results of operations and financial condition during the period covered by this report. Historical results may not be indicative of future performance. This discussion includes forward-looking statements that reflect our plans, estimates and beliefs. Such statements involve risks and uncertainties. Our actual results may differ materially from those contemplated by these forward-looking statements as a result of various factors, including those set forth under the headings "Risk Factors" and "Cautionary Statement Regarding Forward-Looking Statements." This discussion should be read in conjunction with our unaudited consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q and our audited consolidated financial statements and notes thereto included in the 2022 Form 10-K. In this discussion, we use certain non-GAAP financial measures. Explanations of these non-GAAP financial measures and reconciliations to the most directly comparable GAAP financial measures are included in this "Management's Discussion and Analysis of Financial Condition and Results of Operations." Investors should not consider non-GAAP financial measures in isolation or as substitutes for financial information presented in compliance with GAAP.

Overview

We are a civil infrastructure company that specializes in the building and maintenance of transportation networks. Our operations leverage a highly skilled workforce, strategically located HMA plants, substantial construction assets and select material deposits. We provide construction products and services to both public and private infrastructure projects, with an emphasis on highways, roads, bridges, airports and commercial and residential sites in the southeastern United States.

Our public projects are funded by federal, state and local governments and include projects for roads, highways, bridges, airports and other forms of infrastructure. Public transportation infrastructure projects historically have been a relatively stable portion of state and federal budgets and represent a significant share of the United States construction market. Federal funds are allocated on a state-by-state basis, and each state is required to match a portion of the federal funds that it receives. Federal highway spending uses funds predominantly from the Highway Trust Fund, which derives its revenues from fuel taxes and other user fees.

In addition to public infrastructure projects, we provide a wide range of large sitework construction and HMA paving services to private construction customers, including commercial and residential developers and local businesses.

Contract Backlog

At June 30, 2023, our contract backlog was $1.59 billion. Contract backlog is a financial measure that generally reflects the dollar value of work that the Company expects to perform in the future. We generally include a construction project in our contract backlog at the time it is awarded and to the extent we believe funding is probable. Our backlog generally consists of uncompleted work on contracts in progress and contracts for which we have executed a contract but have not commenced the work. For uncompleted work on contracts in progress, we include (i) executed change orders, (ii) pending change orders for which we expect to receive confirmation in the ordinary course of business and (iii) claims that we have made against our customers for which we have determined we have a legal basis under existing contractual arrangements and as to which we consider collection to be probable. Backlog of uncompleted work on contracts under which work was either in progress or had not yet begun was $1.23 billion at June 30, 2023. Our contract backlog also includes low bid/no contract jobs, which consist of (i) public bid jobs for which we were the low bidder and no contract has been executed and (ii) private work jobs for which we have been notified that we are the low bidder or have been given a notice to proceed, but no contract has been executed. Low bid/no contract backlog was $0.36 billion at June 30, 2023.

Recent Developments

Acquisitions

On November 18, 2022, we acquired three HMA manufacturing plants and certain related assets located in the Nashville, Tennessee metro area for $9.5 million. In connection with this transaction, we disposed of a quarry in North Carolina, resulting in total cash proceeds of $37.0 million and a gain on the facility exchange of $5.4 million. On December 1, 2022, we acquired all of the capital stock of Ferebee Corporation, an HMA manufacturing and paving company headquartered in Charlotte, North Carolina, for $67.3 million. The transaction established our second platform company in North Carolina and added three HMA plants in the greater Charlotte/Rock Hill metro area. On April 3, 2023, we acquired substantially all the assets of Pickens Construction, Inc., an asphalt paving company headquartered in Anderson, South Carolina, for $5.0 million. The transaction added an HMA plant in the greater Greenville, South Carolina metro area. On May 1, 2023, we acquired the Huntsville, Alabama operations of Southern Site Contractors, LLC, an excavation, grading and utility contractor, for $1.1 million. The transaction enhanced our vertical integration of construction services in the greater Huntsville, Alabama metro area. For further discussion regarding these transactions, see Note 4 - Business Acquisitions to the unaudited consolidated financial statements included elsewhere in this report.

How We Assess Performance of Our Business

Revenues

We derive our revenues predominantly by providing construction products and services for both public and private infrastructure projects, with an emphasis on highways, roads, bridges, airports and commercial and residential sites. Our projects represent a mix of federal, state, municipal and private customers. We also derive revenues from the sale of HMA, aggregates, and liquid asphalt cement to customers. We recognize revenues derived from projects as we satisfy our performance obligations over time (formerly known as the percentage-of-completion method), measured by the relationship of total cost incurred compared to total estimated contract costs (cost-to-cost input method). Changes in job performance, job conditions and estimated profitability, including those arising from contract penalty provisions and final contract settlements, may result in revisions to estimated costs and income, and are recognized in the period in which the revisions are determined. Revenues derived from the sale of HMA, aggregates, and liquid asphalt cement are recognized when the risks associated with ownership have passed to the customer.

Gross Profit

Gross profit represents revenues less cost of revenues. Cost of revenues consists of all direct and indirect costs associated with construction contracts, including raw materials, labor, equipment costs, depreciation, lease expenses, subcontract costs and other expenses at our HMA plants, aggregates mining facilities, and liquid asphalt cement terminal. Our cost of revenues is directly affected by fluctuations in commodity prices, primarily liquid asphalt and diesel fuel. From time to time, when appropriate, we limit our exposure to changes in commodity prices by entering into forward purchase commitments. In addition, our public infrastructure contracts often provide for price adjustments based on fluctuations in certain commodity-related product costs. These price adjustment provisions are in place for most of our public infrastructure contracts, and we seek to include similar provisions in our private contracts.

Depreciation, Depletion, Accretion and Amortization

Property, plant and equipment are initially recorded at cost or, if acquired as a business combination, at fair value. Depreciation on property, plant and equipment is computed on a straight-line basis over the estimated useful life of the asset. Amortization expense is the periodic expense related to leasehold improvements and intangible assets. Leasehold improvements are amortized over the lesser of the life of the underlying asset or the remaining lease term. Our intangible assets were recognized as a result of certain acquisitions and are generally amortized on a straight-line basis over the estimated useful lives of the assets. Our unfavorable contract liabilities were recognized as a result of certain acquisitions and are amortized as the associated projects progress. Mineral reserves are depleted in accordance with the units-of-production method as aggregates are extracted, using the initial allocation of cost based on proven and probable reserves.

General and Administrative Expenses

General and administrative expenses include costs related to our operational offices that are not allocated to direct contract costs and expenses related to our corporate offices. These expenses consist primarily of salaries and personnel costs for our administration, finance and accounting, legal, information systems, human resources and certain managerial employees. General and administrative expenses also include acquisition expenses, audit, consulting and professional fees, stock-based compensation expense, travel, insurance, office space rental costs, property taxes and other corporate and overhead expenses.

Gain on Sale of Property, Plant and Equipment

In the normal course of business, we sell assets for various reasons, including when the cost of maintaining the asset exceeds the cost of replacing it. The gain or loss on the sale of property, plant and equipment reflects the difference between the carrying value at the date of disposal and the net consideration received from the sale during the period.

Gain on Facility Exchange

As part of our continued growth strategy, we may exchange or sell other facilities in order to generate capital for use in connection with other strategic initiatives. The gain or loss on the exchange or sale of a facility reflects the difference between the net carrying value of the facility at the date of disposal and the consideration received from the exchange or sale during the period.

Interest Expense, Net

Interest expense, net primarily represents interest incurred on our long-term debt, such as the Term Loan and the Revolving Credit Facility, and amortization of deferred debt issuance costs. These amounts are partially offset by interest income earned on short-term investments of cash balances in excess of our current operating needs.

Other Key Performance Indicators - Adjusted EBITDA and Adjusted EBITDA Margin

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, accretion and amortization, (iv) equity-based compensation expense, (v) loss on the extinguishment of debt and (vi) certain management fees and expenses. Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of revenues for each period. 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 or any other performance measure derived in accordance with GAAP as an indicator of our operating performance. We present Adjusted EBITDA and Adjusted EBITDA Margin 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 Adjusted EBITDA and Adjusted EBITDA Margin 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, the most directly comparable measure calculated in accordance with GAAP, to Adjusted EBITDA and the calculation of Adjusted EBITDA Margin for the periods presented (unaudited, in thousands, except percentages):

	For the Three Months Ended June 30,		For the Nine Months Ended June 30,	
	2023	2022	2023	2022
Net income	$ 21,677	$ 12,168	$ 18,088	$ 8,261
Interest expense, net	5,039	2,054	13,801	4,177
Provision for income taxes	7,117	3,955	6,153	2,868
Depreciation, depletion, accretion and amortization	19,536	17,244	57,769	50,291
Equity-based compensation expense	2,737	1,848	7,909	5,094
Management fees and expenses [1]	383	370	1,109	1,129
Adjusted EBITDA	$ 56,489	$ 37,639	$ 104,829	$ 71,820
Revenues	$ 421,893	$ 380,272	$ 1,088,522	$ 908,621
Adjusted EBITDA Margin	13.4 %	9.9 %	9.6 %	7.9 %

(1) Reflects fees and reimbursement of certain out-of-pocket expenses under a management services agreement with SunTx (see Note 12 - Related Parties to the unaudited consolidated financial statements included elsewhere in this report).

Results of Operations

Three Months Ended June 30, 2023 Compared to Three Months Ended June 30, 2022

The following table sets forth selected financial data for the three months ended June 30, 2023 and 2022 (unaudited in thousands, except percentages):

	For the Three Months Ended June 30,				Change From the Three Months Ended June 30, 2022 to the Three Months Ended June 30, 2023	
	2023		2022			
	Dollars	% of Revenues	Dollars	% of Revenues	$ Change	% Change
Revenues	$ 421,893	100.0 %	$ 380,272	100.0 %	$ 41,621	10.9 %
Cost of revenues	357,821	84.8 %	336,022	88.4 %	21,799	6.5 %
Gross profit	64,072	15.2 %	44,250	11.6 %	19,822	44.8 %
General and administrative expenses	(32,231)	(7.7) %	(26,584)	(7.0) %	(5,647)	21.2 %
Gain on sale of property, plant and equipment	1,499	0.4 %	333	0.1 %	1,166	350.2 %
Gain on facility exchange	—	— %	—	— %	—	— %
Operating income	33,340	7.9 %	17,999	4.7 %	15,341	85.2 %
Interest expense, net	(5,039)	(1.2) %	(2,054)	(0.5) %	(2,985)	145.3 %
Other income	493	0.1 %	178	— %	315	177.0 %
Income before provision for income taxes	28,794	6.8 %	16,123	4.2 %	12,671	78.6 %
Provision for income taxes	7,117	1.7 %	3,955	1.0 %	3,162	79.9 %
Net income	$ 21,677	5.1 %	$ 12,168	3.2 %	$ 9,509	78.1 %
Adjusted EBITDA	$ 56,489	13.4 %	$ 37,639	9.9 %	$ 18,850	50.1 %

Revenues. Revenues for the three months ended June 30, 2023 increased $41.6 million, or 10.9%, to $421.9 million from $380.3 million for the three months ended June 30, 2022. The increase included $41.4 million of revenues attributable to acquisitions completed subsequent to June 30, 2022.

Gross Profit. Gross profit for the three months ended June 30, 2023 increased $19.8 million, or 44.8%, to $64.1 million from $44.3 million for the three months ended June 30, 2022. The increase in gross profit was the result of a 10.9% increase in revenues for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 and a higher gross profit margin. The higher gross profit margin was due to (i) efficient utilization of our plants and equipment fleet and (ii) completion of new backlog with more favorable margins.

General and Administrative Expenses. General and administrative expenses for the three months ended June 30, 2023 increased $5.6 million, or 21.2%, to $32.2 million from $26.6 million for the three months ended June 30, 2022. The increase was the result of (i) a $0.9 million increase in equity-based compensation expense, (ii) a $2.2 million increase attributable to general and administrative expenses associated with the businesses acquired subsequent to June 30, 2022, and (iii) a $3.3 million increase in management personnel payroll and benefits, partially offset by a $0.8 million decrease in other general and adminstrative expenses.

Gain on Sale of Property, Plant and Equipment. Gain on sale of property, plant and equipment for the three months ended June 30, 2023 increased $1.2 million, or 350.2%, to $1.5 million from $0.3 million for the three months ended June 30, 2022. The increase was primarily the result of higher levels of sales of equipment and components during the three months ended June 30, 2023.

Interest Expense, Net. Interest expense, net for the three months ended June 30, 2023 increased $2.9 million, or 145.3%, to $5.0 million compared to $2.1 million for the three months ended June 30, 2022. The increase in interest expense was due to a $80.4 million increase in the average principal debt balance outstanding and higher interest rates during the three months ended June 30, 2023 compared to the corresponding period in 2022.

Provision for Income Taxes. Our effective tax rate increased to 24.7% for the three months ended June 30, 2023, from 24.5% for the three months ended June 30, 2022. Our higher effective tax rate during the three months ended June 30, 2023 was due to differences in state tax rates at our operating subsidiaries.

Net Income. Net income increased $9.5 million to $21.7 million for the three months ended June 30, 2023, compared to $12.2 million for the three months ended June 30, 2022. The increase in net income was primarily a result of higher gross profit, partially offset by an increase in general and administrative expenses and interest expense, net, all as described above.

Adjusted EBITDA and Adjusted EBITDA Margin. Adjusted EBITDA and Adjusted EBITDA Margin were $56.5 million and 13.4%, respectively, for the three months ended June 30, 2023, compared to $37.6 million and 9.9%, respectively, for the three months ended June 30, 2022. The increase in Adjusted EBITDA and Adjusted EBITDA Margin resulted from an increase in gross profit, gain on sale of property, plant and equipment, and depreciation, depletion, accretion and amortization, partially offset by higher general and administrative expenses, all as described above. See the description of Adjusted EBITDA and Adjusted EBITDA Margin, as well as a reconciliation of Adjusted EBITDA to net income and the calculation of Adjusted EBITDA Margin, under the heading "How We Assess Performance of Our Business" above.

Nine Months Ended June 30, 2023 Compared to Nine Months Ended June 30, 2022

The following table sets forth selected financial data for the nine months ended June 30, 2023 and 2022 (unaudited in thousands, except percentages):

	For the Nine Months Ended June 30,				Change From the Nine Months Ended June 30, 2022 to the Nine Months Ended June 30, 2023	
	2023		2022			
	Dollars	% of Revenues	Dollars	% of Revenues	$ Change	% Change
Revenues	$ 1,088,522	100.0 %	$ 908,621	100.0 %	$ 179,901	19.8 %
Cost of revenues	967,674	88.9 %	818,910	90.1 %	148,764	18.2 %
Gross profit	120,848	11.1 %	89,711	9.9 %	31,137	34.7 %
General and administrative expenses	(93,945)	(8.6) %	(76,530)	(8.5) %	(17,415)	22.8 %
Gain on sale of property, plant and equipment	4,825	0.4 %	1,788	0.2 %	3,037	169.9 %
Gain on facility exchange	5,389	0.5 %	—	— %	5,389	— %
Operating income	37,117	3.4 %	14,969	1.6 %	22,148	148.0 %
Interest expense, net	(13,801)	(1.3) %	(4,177)	(0.5) %	(9,624)	230.4 %
Other income	925	0.1 %	337	0.1 %	588	174.5 %
Income before provision for income taxes	24,241	2.2 %	11,129	1.2 %	13,112	117.8 %
Provision for income taxes	6,153	0.6 %	2,868	0.3 %	3,285	114.5 %
Net income	$ 18,088	1.6 %	$ 8,261	0.9 %	$ 9,827	119.0 %
Adjusted EBITDA	$ 104,829	9.6 %	$ 71,820	7.9 %	$ 33,009	46.0 %

Revenues. Revenues for the nine months ended June 30, 2023 increased $179.9 million, or 19.8%, to $1.1 billion from $908.6 million for the nine months ended June 30, 2022. The increase included $91.0 million of revenues attributable to acquisitions completed subsequent to June 30, 2022 and $88.9 million of revenues in our existing markets from contract work and sales of HMA and aggregates to third parties. The 9.8% increase in revenues in our existing markets compared to the prior year period was due to strong demand in both public and private work.

Gross Profit. Gross profit for the nine months ended June 30, 2023 increased $31.1 million, or 34.7%, to $120.8 million from $89.7 million for the nine months ended June 30, 2022. The increase in gross profit was the result of a 19.8% increase in revenues for the nine months ended June 30, 2023 compared to the nine months ended June 30, 2022 and a higher gross profit margin. The higher gross profit margin was due to (i) efficient utilization of our plants and equipment fleet and (ii) completion of new backlog with more favorable margins.

General and Administrative Expenses. General and administrative expenses for the nine months ended June 30, 2023 increased $17.4 million, or 22.8%, to $93.9 million from $76.5 million for the nine months ended June 30, 2022. The increase was the result of (i) a $2.8 million increase in equity-based compensation expense, (ii) a $4.9 million increase attributable to general and administrative expenses associated with the businesses acquired subsequent to June 30, 2022, and (iii) a $10.8 million increase in management personnel payroll and benefits, partially offset by a $1.1 million decrease in other general and administrative expenses.

Gain on Sale of Property, Plant and Equipment. Gain on sale of property, plant and equipment for the nine months ended June 30, 2023 increased $3.0 million, or 169.9%, to $4.8 million from $1.8 million for the nine months ended June 30, 2022. The increase was primarily the result of $1.3 million gain on the sale of an excess office building in North Carolina that was no longer needed in our operations and higher levels of equipment and components during the nine months ended June 30, 2023.

Gain on Facility Exchange. Gain on facility exchange for the nine months ended June 30, 2023 was $5.4 million compared to $0.0 million for the nine months ended June 30, 2022. The gain was the result of the disposition of a quarry in North Carolina. In connection with this transaction, the Company acquired three HMA manufacturing plants and certain related assets located in the Nashville, Tennessee metro area.

Interest Expense, Net. Interest expense, net for the nine months ended June 30, 2023 increased $9.6 million, or 230.4%, to $13.8 million compared to $4.2 million for the nine months ended June 30, 2022. The increase in interest expense was due to a $112.5 million increase in the average principal debt balance outstanding and higher interest rates during the nine months ended June 30, 2023 compared to the corresponding period in 2022.

Provision for Income Taxes. Our effective tax rate decreased to 25.4% for the nine months ended June 30, 2023, from 25.8% for the nine months ended June 30, 2022. Our lower effective tax rate during the nine months ended June 30, 2023 was due to differences in state tax rates at our operating subsidiaries.

Net Income. Net income increased $9.8 million to $18.1 million for the nine months ended June 30, 2023, compared to $8.3 million for the nine months ended June 30, 2022. The increase in net income was primarily a result of higher gross profit, gain on sale of property, plant and equipment and gain on facility exchange, partially offset by an increase in general and administrative expenses and interest expense, net, all as described above.

Adjusted EBITDA and Adjusted EBITDA Margin. Adjusted EBITDA and Adjusted EBITDA Margin were $104.8 million and 9.6%, respectively, for the nine months ended June 30, 2023, compared to $71.8 million and 7.9%, respectively, for the nine months ended June 30, 2022. The increase in Adjusted EBITDA and Adjusted EBITDA Margin resulted from an increase in gross profit, gains on sale of property, plant and equipment, gain on facility exchange and depreciation, depletion, accretion and amortization, partially offset by higher general and administrative expenses, all as described above. See the description of Adjusted EBITDA and Adjusted EBITDA Margin, as well as a reconciliation of Adjusted EBITDA to net loss and the calculation of Adjusted EBITDA Margin, under the heading “How We Assess Performance of Our Business” above.

Liquidity and Capital Resources

Cash Flows Analysis

The following table sets forth our cash flows for the periods indicated (unaudited, in thousands):

	For the Nine Months Ended June 30,	
	2023	2022
Net cash provided by operating activities, net of acquisition	$ 94,542	$ (9,721)
Net cash used in investing activities	(118,638)	(158,607)
Net cash provided by financing activities	43,486	137,261
Net change in cash and cash equivalents	$ 19,390	$ (31,067)

Operating Activities

During the nine months ended June 30, 2023, cash provided by operating activities, net of acquisitions, was $94.5 million, primarily as a result of:

- net income of $18.1 million, including $57.8 million of depreciation, depletion, accretion and amortization of long-lived assets, unrealized losses on derivative instruments of $1.4 million, gain on sale of property, plant and equipment of $4.8 million, gain on sale of facility exchange of $5.4 million and equity-based compensation expense of $7.9 million;

- a decrease in contracts receivable including retainage, net of $22.8 million due to normal fluctuations resulting from the timing of processing transactions in our accounts receivable cycle;
- an increase in prepaid expenses and other current assets of $3.2 million primarily due to the timing of payments under our insurance policies and other expenses;
- an increase in inventories of $12.0 million due to increased inventories from acquisitions, growth in existing markets, higher inventory costs and normal fluctuations in our inventory cycle;
- a decrease in accounts payable and accrued expenses and other current liabilities of $9.2 million due to the timing of processing transactions in our accounts payable cycle; and
- a net increase of $10.6 million in the difference between billings in excess of costs and estimated earnings on uncompleted contracts and costs and estimated earnings in excess of billings on uncompleted contracts and due to the timing of performing and closing projects.

During the nine months ended June 30, 2022, cash used by operating activities, net of acquisitions, was $9.7 million, primarily as a result of:

- net income of $8.3 million, including $50.3 million of depreciation, depletion, accretion and amortization of long-lived assets, unrealized gains on derivative instruments of $2.6 million and equity-based compensation expense of $5.1 million;
- an increase in contracts receivable including retainage, net, of $71.9 million as a result of higher overall revenues due to acquisitions and growth in existing markets;
- an increase in prepaid expenses and other current assets of $2.3 million primarily due to timing of deposits for federal and state income taxes and the timing of payments under our insurance policies;
- an increase in inventories of $21.8 million due to inventory acquired in acquisitions, higher inventory costs and normal fluctuations in our inventory cycle;
- an increase in accounts payable and accrued expenses and other current liabilities of $23.1 million due to increased construction activity; and
- a net increase of $3.9 million in the difference between costs and estimated earnings in excess of billings on uncompleted contracts and billings in excess of costs and estimated earnings on uncompleted contracts due to the timing of performing and closing projects and higher revenue from construction activities.

Investing Activities

During the nine months ended June 30, 2023, cash used in investing activities was $118.6 million, of which $82.7 million related to acquisitions completed in the period, $79.0 million was invested in property, plant and equipment and $7.9 million was invested in restricted investments by the Captive, partially offset by $12.6 million of proceeds from the sale of property, plant and equipment, $37.0 million of proceeds from the facility exchange and $1.4 million of proceeds from the sale of restricted investments.

During the nine months ended June 30, 2022, cash used in investing activities was $158.6 million, of which $102.9 million related to acquisitions completed in the period, $52.2 million was invested in property, plant and equipment and $7.7 million was invested in restricted investments by the Captive, partially offset by $4.2 million of proceeds from the sale of equipment.

Financing Activities

During the nine months ended June 30, 2023, cash provided by financing activities was $43.5 million. We received $53.0 million of proceeds from our Credit Facility, which were primarily used for acquisitions completed in the period. This cash flow was partially offset by $9.4 million of principal payments on long-term debt.

During the nine months ended June 30, 2022, cash provided by financing activities was $137.3 million. We received $142.3 million of proceeds from issuance of long-term debt, net of debt issuance costs and discounts, primarily used for acquisitions completed in the period. This increase in cash was partially offset by $5.0 million of principal payments on long-term debt.

Credit Agreement

We and each of our subsidiaries are parties to the Credit Agreement, which provides for the Term Loan and the Revolving Credit Facility. At June 30, 2023 and September 30, 2022, there was $277.5 million and $271.9 million, respectively, of principal outstanding under the Term Loan, $143.1 million and $105.1 million, respectively, of principal outstanding under the Revolving Credit Facility, and availability of $171.9 million and $208.6 million, respectively, under the Revolving Credit Facility, including a reduction for outstanding letters of credit. The Company also had $10.0 million available under the Delayed Draw Term Loan at June 30, 2023 and September 30, 2022.

The Credit Agreement requires the Company to satisfy certain financial covenants, including a minimum fixed charge coverage ratio of 1.20-to-1.00 and a maximum consolidated leverage ratio of 3.50-to-1.00, subject to certain adjustments. At June 30, 2023 and September 30, 2022, our fixed charge coverage ratio was 2.00-to-1.00 and 2.56-to-1.00, respectively, and our consolidated leverage ratio was 2.27-to-1.00 and 2.79-to-1.00, respectively.

From time to time, the Company has entered into interest rate swap agreements to hedge against the risk of changes in interest rates. At June 30, 2023 and September 30, 2022, the aggregate notional value of the interest rate swap agreement was $300.0 million, and the fair value was $24.5 million and $24.7 million, respectively, which amounts are included within other assets on the Company's Consolidated Balance Sheets.

For more information about the Credit Agreement, see Note 8 - Debt to the unaudited consolidated financial statements included elsewhere in this report.

Capital Requirements and Sources of Liquidity

During the nine months ended June 30, 2023 and 2022, our capital expenditures were approximately $79.0 million and $52.2 million, respectively. Our capital expenditures are typically made during the fiscal year in which they are approved. At June 30, 2023, our commitments for capital expenditures were not material to our financial condition or results of operations on a consolidated basis. For fiscal 2023, we expect total capital expenditures to be $85.0 million to $90.0 million. Our capital expenditure budget is an estimate and is subject to change.

Historically, we have required significant amounts of cash in order to make capital expenditures, purchase materials and fund our organic expansion into new markets. Our working capital needs are driven by the seasonality and growth of our business, with our cash requirements increasing in periods of growth. Additional cash requirements resulting from our growth include the costs of additional personnel, production and distribution facilities, enhancements to our information systems, integration costs related to any acquisitions and our compliance with laws and rules applicable to public companies.

We have historically relied on cash available through credit facilities, in addition to cash from operations, to finance our working capital requirements and to support our growth. We regularly monitor potential capital sources, including equity and debt markets, in an effort to meet our planned capital expenditures and liquidity requirements. Our future success will depend on our ability to access outside sources of capital.

We believe that our operating cash flow and available borrowings under the Credit Agreement will be sufficient to fund our operations and planned capital expenditures for at least the next 12 months. However, future cash flows are subject to a number of variables, including the potential impacts of inflation and supply chain constraints, and significant additional capital expenditures will be required to conduct our operations. There can be no assurance that operations and other capital resources will provide sufficient cash to maintain planned or future levels of capital expenditures. In the event that we make one or more acquisitions and the amount of capital required is greater than the amount of cash on hand we have available for acquisitions at that time, we could be required to reduce the expected level of capital expenditures and/or seek additional capital. If we seek additional capital, we may do so through borrowings under the Credit Agreement, joint ventures, asset sales, offerings of debt or equity securities or other means. However, our ability to engage in any such transactions may be constrained by economic conditions and other factors outside of our control. We cannot guarantee that additional capital will be available on acceptable terms or at all. If we are unable to obtain the funds we need, we may not be able to complete acquisitions that may be favorable to us or finance the capital expenditures necessary to conduct our operations.

Contractual Obligations

The following table summarizes our significant obligations outstanding as of June 30, 2023 (unaudited, in thousands):

	Payments Due by Fiscal Year						
	Total	2023	2024	2025	2026	2027	2028 and Thereafter
Debt obligations	$ 420,600	$ 3,125	$ 14,500	$ 18,125	$ 21,750	$ 363,100	$ —
Operating leases	21,927	799	2,793	2,390	2,273	2,098	11,574
Purchase commitments	4,396	1,259	2,653	484	—	—	—
Royalty payments	2,556	18	295	256	192	180	1,615
Asset retirement obligations	2,402	—	—	—	—	—	2,402
Total	$ 451,881	$ 5,201	$ 20,241	$ 21,255	$ 24,215	$ 365,378	$ 15,591

Off-Balance Sheet Arrangements

As of June 30, 2023, we had aggregate letters of credit outstanding in the amount of $10.0 million, future purchase commitments of diesel fuel and natural gas of $4.3 million and $0.1 million, respectively, and $2.6 million of minimum royalty payments related to aggregates facilities. Other than the letters of credit, future purchase commitments and minimum royalty payments, we do not currently have any off-balance sheet arrangements that have, or are reasonably likely to have, a material current or future effect on our financial condition, changes in our financial condition, revenue or expenses, results of operations, liquidity, capital expenditures or capital resources. See Note 17 - Commitments to our unaudited consolidated financial statements included elsewhere in this report for additional information.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Commodity Price Risk

We are subject to commodity price risk with respect to price changes in liquid asphalt and energy, including fossil fuels and electricity for aggregates and HMA production, natural gas for HMA production and fuel for distribution vehicles and production-related mobile equipment. In order to manage or reduce commodity price risk, we monitor the costs of these commodities at the time of bid and price them into our contracts accordingly. Furthermore, liquid asphalt escalator provisions in most of our public contracts, and in some of our private and commercial contracts, limit our exposure to price fluctuations in this commodity. In addition, we enter into various firm purchase commitments, with terms generally less than 18 months, for certain raw materials.

Our risk management activities also include the use of financial derivative instruments. We have entered into fuel swap and natural gas swap contracts to mitigate the financial impact of fluctuations in commodity prices. We do not enter into commodity swap contracts for speculative or trading purposes. These fuel and natural gas swap contracts provide a fixed price for less than 50% of our estimated fuel and natural gas usage for the remainder of fiscal year 2023 and part of fiscal year 2024.

The table below provides information about the Company's swap contracts that are sensitive to changes in commodity prices, specifically fuel and natural gas, as of June 30, 2023 (unaudited).

	Carrying Amount	Fair Value
Fuel swap contracts [(1)]		
Contract volumes (1,000 gallons)	1,008	
Weighted average price (per gallon)	2.80	
Contract amount (in thousands)	$ (531)	$ (531)
Natural gas swap contracts [(1)]		
Contract volumes (1,000 MMBTU)	250	
Weighted average price (per MMBTU)	3.88	
Contract amount (in thousands)	$ (351)	$ (351)

[(1)] See also Note 15 - Investment in Derivative Instruments and Note 16 - Fair Value Measurements to the unaudited consolidated financial statements included elsewhere in this report.

Interest Rate Risk

We are exposed to interest rate risk on certain of our short- and long-term debt obligations used to finance our operations and acquisitions. We have SOFR-based floating rate borrowings under the Credit Agreement, which expose us to variability in interest payments due to changes in the reference interest rates. From time to time, we use derivative instruments as hedges against the impact of interest rate changes on future earnings and cash flows. We do not enter into such derivative instruments for speculative or trading purposes. At June 30, 2023, we had a total of $420.6 million of variable rate borrowings outstanding. Holding other factors constant and absent the interest rate swap agreements described above, a hypothetical 1% change in our borrowing rates would result in a $4.2 million change in our annual interest expense based on our variable rate debt at June 30, 2023.

The following table presents the future principal payment obligations, interest payments, and fair values associated with the Company's debt instruments assuming the Company's actual level of variable rate debt as of June 30, 2023 (unaudited, in thousands).

	2023	2024	2025	2026	Thereafter	Total	Fair Value
Debt obligations							
Term Loan Principal Payments	$ 3,125	$ 14,500	$ 18,125	$ 21,750	$ 220,000	$ 277,500	$ 277,500
Revolving Credit Facility Principal Payments	—	—	—	—	143,100	143,100	143,100
Interest Payments [1]	7,361	28,842	27,796	26,369	18,777		

[1] Represents projected interest payments using the Company's June 2023 SOFR-based floating rate of 7.00% per annum.

The notional amount of the Company's outstanding interest rate swap contract at June 30, 2023 was $300.0 million. The maturity date of this swap is June 30, 2027, and the fair value of the outstanding swap contract was $24.5 million as of June 30, 2023. See also Note 15 - Investment in Derivative Instruments and Note 16 - Fair Value Measurements to the unaudited consolidated financial statements included elsewhere in this report.

Inflation Risk

We are subject to the effects of inflation through wage pressures, increases in the cost of raw materials used to produce HMA, and increases in other items, such as fuel, concrete and steel. In recent years, inflation, supply chain and labor constraints have had a significant impact on the global economy, including the construction industry in the United States. While it is impossible to fully eliminate the impact of these factors, we seek to recover increasing costs by obtaining higher prices for our products or by including the anticipated price increases in our bids. Due to the relatively short-term duration of our construction contracts, we are generally able to reduce our exposure to price increases on new contracts, but we are limited in our ability to pass through increased costs for projects already in our backlog. Going forward, continued cost inflation in these areas may require further price adjustments to maintain profit margin, and any price increases may have a negative effect on demand.

Item 4. Controls and Procedures.

Evaluation of Disclosure Control and Procedures

Our management carried out, as of June 30, 2023, with the participation of our Chief Executive Officer and our Chief Financial Officer, an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2023, our disclosure controls and procedures were effective to provide reasonable assurance that material information required to be disclosed by us in reports we file under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms and that information required to be disclosed by us in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There were no changes to our internal control over financial reporting during the quarter ended June 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - Other Information

Item 1. Legal Proceedings.

Due to the nature of our business, we are involved in routine litigation or subject to other disputes or claims related to our business activities, including, among other things, (i) workers' compensation claims, (ii) employment-related disputes and (iii) liability issues or breach of contract or tortious conduct claims in connection with the performance of services and provision of materials. We and our affiliates are also subject to government inquiries in the ordinary course of business seeking information concerning our compliance with government construction contracting requirements and various laws and regulations, the outcome of which cannot be predicted with certainty. In the opinion of our management, after consultation with legal counsel, none of the pending inquiries, litigation, disputes or claims against us, if decided adversely to us, would have a material adverse effect on our financial condition, cash flows or results of operations. There have been no material changes to the legal proceedings disclosed in the 2022 Form 10-K.

Item 1A. Risk Factors.

In addition to the other financial information set forth in this report, you should carefully consider the factors discussed below and in Part I, Item 1A, "Risk Factors," in the 2022 Form 10-K that could materially affect our business, financial condition or future operating results. The risks described below and in the 2022 Form 10-K are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and operating results.

Inflation and supply chain disruptions have resulted, and may continue to result, in increased costs, some of which we may not be able to recoup.

Inflation and supply chain disruptions have the potential to adversely affect our business, financial condition and results of operations, particularly if we are unable to pass through increased costs to our customers. During the three and nine months ended June 30, 2023, we continued to experience an upward trend in several inflation-sensitive inputs that we use to provide our products and services, including upward pressure on wages and increases in the cost of raw materials used to produce HMA and other items critical to our business, including fuel, concrete and steel. In addition, we continued to experience disruptions from various participants in our supply chains, including subcontractors, materials suppliers and equipment manufacturers, who provide the raw materials, equipment, vehicles, construction supplies and other services we require in order to manufacture HMA and perform our construction projects. While we have been able to mitigate some of the effects of inflation, supply chain disruptions and labor constraints on our business by increasing prices for our products and including the anticipated cost increases in the construction projects for which we bid, we may not be able to do so in the future. In addition, we are limited in our ability to pass through increased costs for projects already in our backlog, and if we are unable to do so, we may not recoup our losses or diminished profit margins. If inflation and supply chain disruptions continue to rise, we may be required to implement further price adjustments to maintain our profit margin, and any price increases may have a negative effect on demand.

Unfavorable developments affecting the banking and financial services industry could adversely affect our business, liquidity and financial condition, and overall results of operations.

Actual events, concerns or speculation about disruption or instability in the banking and financial services industry, such as liquidity constraints, the failure of individual institutions, or the inability of individual institutions or the banking and financial service industry generally to meet their contractual obligations, could significantly impair our access to capital, delay access to deposits or other financial assets, or cause actual loss of funds subject to cash management arrangements. Similarly, these events, concerns or speculation could result in less favorable commercial financing terms, including higher interest rates or costs and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire financing on acceptable terms or at all. Additionally, our customers, critical vendors and business partners also could be adversely affected by these risks as described above, which in turn could result in their committing a breach or default under their contractual agreements with us, their insolvency or bankruptcy, or other adverse effects. Any decline in available funding or access to our cash and liquidity resources, or non-compliance of banking and financial services counterparties with their contractual commitments to us could, among other risks, have material adverse impacts on our ability to meet our operating expenses and other financial needs, could result in breaches of our financial and/or contractual obligations, and could have material adverse impacts on our business, financial condition and results of operations.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Unregistered Sales of Equity Securities

The Company did not sell any of its equity securities during the period covered by this report that were not registered under the Securities Act.

Issuer Purchases of Equity Securities

During the period covered by this report, the Company did not purchase any of its equity securities that are registered under Section 12 of the Exchange Act.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

The information concerning mine safety violations or other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulation S-K (17 C.F.R. Part 229.104) is included in Exhibit 95.1 to this Quarterly Report on Form 10-Q.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit Number	Description
3.1*	Amended and Restated Certificate of Incorporation of Construction Partners, Inc., as amended through February 23, 2023
3.2	Amended and Restated By-Laws of Construction Partners, Inc. (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K (File No. 001-38479) filed on November 9, 2022)
4.1	Form of Class A Common Stock Certificate (incorporated by reference to Exhibit 4.1 to Amendment No. 1 to the Registration Statement on Form S-1 (File No. 333-224174) filed on April 23, 2018)
10.1*	Second Amendment to Third Amended and Restated Credit Agreement, dated as of May 8, 2023, by and among Construction Partners, Inc. and each of its wholly owned subsidiaries, as borrowers, PNC Bank, National Association, as administrative agent and issuing lender, and certain other lenders party thereto
31.1*	Certification of President and Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
31.2*	Certification of Executive Vice President and Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
32.1**	Certification of President and Chief Executive Officer pursuant to 18 U.S.C. Section 1350
32.2**	Certification of Executive Vice President and Chief Financial Officer pursuant to 18 U.S.C. Section 1350
95.1*	Mine Safety Disclosures
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

*	Filed herewith.
**	Furnished herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 8th day of August, 2023.

CONSTRUCTION PARTNERS, INC.

By: /s/ Fred J. Smith, III
Fred J. Smith, III
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Name and Signature	Title	Date
/s/ Fred J. Smith, III Fred J. Smith, III	President and Chief Executive Officer (Principal Executive Officer and duly authorized officer)	August 8, 2023
/s/ Gregory A. Hoffman Gregory A. Hoffman	Senior Vice President and Chief Financial Officer (Principal Financial Officer and duly authorized officer)	August 8, 2023

Exhibit 10.1

SECOND AMENDMENT TO
THIRD AMENDED AND RESTATED CREDIT AGREEMENT

This SECOND AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT, dated as of May 8, 2023 (this "**Amendment**"), among Construction Partners, Inc., a Delaware corporation ("**Construction Partners**"); Wiregrass Construction Company, Inc., an Alabama corporation ("**Wiregrass Construction**"); FSC II, LLC, a North Carolina limited liability company ("**FSC**"); C. W. Roberts Contracting, Incorporated, a Florida corporation ("**Roberts Contracting**"), King Asphalt, Inc., a South Carolina corporation ("**King Asphalt**") and The Scruggs Company, a Georgia corporation ("**Scruggs**"), Ferebee Corporation, a North Carolina corporation ("**Ferebee**"), and Ferebee Asphalt Corporation, a North Carolina corporation ("**Ferebee Asphalt**" and, collectively with Construction Partners, Wiregrass Construction, FSC, Roberts Contracting, King Asphalt, Scruggs and Ferebee, the "**Borrowers**", and each, individually, a "**Borrower**"), the Lenders party hereto, and PNC Bank National Association ("**PNC**"), as Administrative Agent and Issuing Lender.

A. Reference is made to that certain Third Amended and Restated Credit Agreement, dated as of June 30, 2022 (as amended by that certain First Amendment to Third Amended and Restated Credit Agreement, dated as of November 17, 2022, the "**Existing Credit Agreement**"; the Existing Credit Agreement, as amended by this Amendment, and as further amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"), among the Borrowers, the Lenders parties thereto from time to time, and PNC as Administrative Agent and Issuing Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement. The rules of interpretation set forth in Section 1.02 of the Credit Agreement are hereby incorporated by reference herein, *mutatis mutandis*.

B. The Borrowers have requested certain amendments to the Existing Credit Agreement as set forth herein.

C. The Administrative Agent and the Lenders party hereto are willing to amend the Existing Credit Agreement as set forth herein, subject to the terms and conditions hereof.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Amendments to the Existing Credit Agreement.** Subject to the terms and conditions set forth herein, Section 9.12 of the Existing Credit Agreement, Operating Leases, is restated in its entirety, so that as amended it reads: "9.12 [Reserved].".

2. **Reaffirmation.** Each of the Loan Parties hereby agrees that (a) with respect to each Loan Document to which it is a party, after giving effect to this Amendment and the transactions contemplated hereunder, all of its obligations, liabilities and indebtedness under such Loan Document, including guarantee obligations, are hereby confirmed and reaffirmed and shall, except as expressly set forth herein, remain unmodified and in full force and effect on a continuous basis and (b) nothing contained herein shall (i) create a course of dealing or (ii) except as expressly set forth herein, constitute amendments of the Existing Credit Agreement, the other Loan Documents or any indebtedness described therein. The Existing Credit Agreement (as amended hereby) and each other Loan Document shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

Without limiting the generality of the foregoing, each Borrower and each Guarantor (collectively, the "**Grantors**" and each a "**Grantor**") reaffirms its obligations as a grantor under the Security Agreement, including without limitation the grant pursuant to Section 1 of the Security Agreement of a security interest to the Administrative Agent for the benefit of the Secured Parties in (and the collateral assignment to the Administrative Agent for the benefit of the Secured Parties of) the property and property rights constituting Collateral (as defined in Section 1 of the Security Agreement) of such Grantor or in which such Grantor has or may have or acquire an interest or the power to transfer rights therein, whether now owned or existing or hereafter created, acquired or arising and wheresoever located, as security for the payment and performance of such Grantor's respective Secured Obligations (as defined in the Security Agreement).

3. **Conditions Precedent.** The effectiveness of this Amendment and the amendments to the Existing Credit Agreement set forth herein are subject to the satisfaction of each of the following conditions:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party to the extent that a Loan Party is a party thereto, each dated the effective date of this Amendment and each in form and substance satisfactory to the Administrative Agent and each of the Lenders party to this Amendment:

(i) executed counterparts of this Amendment, sufficient in number for distribution to the Administrative Agent and its counsel, each Lender party thereto and the Borrowing Agent, executed by the Loan Parties, the Administrative Agent, the Issuing Lender, and Lenders constituting Required Lenders; and

(ii) executed counterparts of such other documents as the Administrative Agent may require.

(b) Unless waived by the Administrative Agent, the Borrowers shall have paid all reasonable and documented out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the date of this Amendment, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

4. **Representations and Warranties**. Each of the Loan Parties represents and warrants as follows:

(a) The execution and delivery of this Amendment by each Loan Party, and the performance by each such Loan Party of this Amendment and the Existing Credit Agreement (as amended by this Amendment), are within such Loan Party's corporate or other powers, have been duly authorized by all necessary limited liability company, corporate or other organizational action, and do not and will not (i) contravene the terms of any of such Person's Organization Documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (iii) violate any Law.

(b) This Amendment has been duly executed and delivered by each Loan Party that is party thereto. This Amendment and the Existing Credit Agreement (as amended by this Amendment) constitute a legal, valid and binding obligation of such Loan Party, enforceable against each such Loan Party that is party hereto in accordance with its terms, subject only to the effect of bankruptcy, moratorium or Debtor Relief Laws or similar Laws or the application of equitable principles by a court of competent jurisdiction.

(c) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution or delivery of this Amendment or performance by, or enforcement against, any Loan Party of this Amendment or the Existing Credit Agreement (as amended by this Amendment).

(d) The representations and warranties of the Borrowers and each other Loan Party contained in the Credit Agreement or any other Loan Document are true and correct in all material respects (unless qualified by materiality or reference to the absence of a Material Adverse Effect, in which event are true and correct), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that the representations and warranties contained in Section 6.5 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant toSection 8.1 of the Existing Credit Agreement.

(e) No Event of Default or Default has occurred and is continuing or would result from this Amendment.

5. **Miscellaneous.**

(a) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of the Loan Documents or in any way limit, impair or otherwise affect the rights and remedies of the Administrative Agent or the Lenders under the Loan Documents. Except as expressly set forth herein, nothing herein shall be deemed to entitle any Loan Party to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Existing Credit Agreement or any other Loan Document in similar or different circumstances. Nothing expressed or implied in this Amendment shall be construed as a release or other discharge of any Loan Party under any Loan Document from any of its obligations and liabilities thereunder.

(b) On and after the date hereof, all references to the Credit Agreement in each of the Loan Documents shall hereafter mean the Existing Credit Agreement as amended by this Amendment, and as further amended, modified, extended, restated, replaced, or supplemented from time to time.

(c) THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. The provisions of Section 12.11 of the Credit Agreement shall apply to this Amendment to the same extent as if fully set forth herein.

(d) EACH LOAN PARTY A PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(e) This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 3. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, e-mail or electronic format (i.e. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Amendment.

(f) This Amendment shall be binding on and inure to the benefit of the parties and their heirs, beneficiaries, successors and permitted assigns. This Amendment constitutes a Loan Document for purposes of the Credit Agreement.

(g) This Amendment constitutes the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. The provisions of this Amendment are intended to be severable. If any provision of this Amendment shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

[Remainder of page left blank intentionally; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

CONSTRUCTION PARTNERS, INC.,
as a Borrower and a Guarantor

By:	/s/ Gregory A. Hoffman
Name:	Gregory A. Hoffman
Title:	Chief Financial Officer

WIREGRASS CONSTRUCTION COMPANY, INC,
as a Borrower and a Guarantor
FSC II, LLC,
as a Borrower and a Guarantor
C. W. ROBERTS CONTRACTING, INCORPORATED,
as a Borrower and a Guarantor
KING ASPHALT, INC.,
as a Borrower and a Guarantor
THE SCRUGGS COMPANY,
as a Borrower and a Guarantor
FEREBEE CORPORATION,
as a Borrower and a Guarantor
FEREBEE ASPHALT CORPORATION,
as a Borrower and a Guarantor

By:	/s/ Gregory A. Hoffman
Name:	Gregory A. Hoffman
Title:	Vice President

PNC BANK, NATIONAL ASSOCIATION, as Administrative Agent

By:	/s/ Anne Williams
Name:	Anne Williams
Title:	Senior Vice President

PNC BANK, NATIONAL ASSOCIATION, as a Lender and the Issuing Lender

By:	/s/ Anne Williams
Name:	Anne Williams
Title:	Vice President

BANK OF AMERICA, N.A., as a Lender

By:	/s/ Rick Macias
Name:	Rick Macias
Title:	Senior Vice President

REGIONS BANK, as a Lender

By:	/s/ David Gibert
Name:	David Gibert
Title:	Vice President

CITY NATIONAL BANK, as a Lender

By:	/s/ Edward E. Wooten
Name:	Edward E. Wooten
Title:	Senior Vice President

FIFTH THIRD BANK, NATIONAL ASSOCIATION, as a Lender

By:	/s/ David A. Ernst
Name:	David A. Ernst
Title:	Vice President

HANCOCK WHITNEY BANK, as a Lender

By:	/s/ Jennifer Pelham
Name:	Jennifer Pelham
Title:	Senior Vice President

KEYBANK NATIONAL ASSOCIATION, as a Lender

By:	/s/ David Raczka
Name:	David Raczka
Title:	Senior Vice President

TD BANK, N.A., as a Lender

By:	/s/ Peter M. Echausse
Name:	Peter M. Echausse
Title:	Managing Director

CADENCE BANK, N.A., as a Lender

By:	/s/ Brian Heslop
Name:	Brian Heslop
Title:	Executive Managing Director

Exhibit 3.1

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

CONSTRUCTION PARTNERS, INC.

Construction Partners, Inc., a corporation organized and existing under the laws of the State of Delaware, DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is "Construction Partners, Inc.". The Corporation was originally incorporated under the name "SunTx CPI Growth Company, Inc.", and the original certificate of incorporation was filed with the Secretary of State of the State of Delaware on April 25, 2007.

2. This Amended and Restated Certificate of Incorporation ("***Certificate***") was duly adopted by the board of directors and the stockholders of the Corporation in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the "***DGCL***").

3. This Certificate restates, integrates and further amends the provisions of the certificate of incorporation of the Corporation.

4. The text of the certificate of incorporation is hereby restated and amended to read in its entirety as follows:

ARTICLE I
NAME

The name of the corporation is Construction Partners, Inc. (the "***Corporation***").

ARTICLE II
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "***DGCL***").

ARTICLE III
REGISTERED AGENT

The street address of the registered office of the Corporation in the State of Delaware is 615 South Dupont Highway, Dover, Delaware 19901, County of Kent, and the name of the Corporation's registered agent at such address is Capitol Services, Inc.

ARTICLE IV
CAPITALIZATION

Section 4.1 Authorized Capital Stock.

The total number of shares of capital stock that the Corporation is authorized to issue is 510,000,000 shares, divided into three classes consisting of (a) 400,000,000 shares of Class A common stock, par value $0.001 per share ("***Class A Common Stock***"); (b) 100,000,000 shares of Class B common stock, par value $0.001 per share ("***Class B Common Stock***" and, together with Class A Common Stock, the "***Common Stock***"); and (c) 10,000,000 shares of preferred stock, par value $0.001 per share ("***Preferred Stock***").

The number of authorized shares of Preferred Stock or either class of Common Stock may be increased or decreased (but not below the number of shares thereof then-outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of either the Preferred Stock or either class of Common Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate (including any certificate of designation relating to any series of Preferred Stock).

Upon the effectiveness of this Certificate pursuant to the DGCL (the "***Effective Time***"), each share of common stock, par value $0.001 per share, of the Corporation either issued and outstanding or held by the Corporation in treasury stock immediately prior to the Effective Time shall, automatically and without any action on the part of the respective holders thereof, be reclassified and changed into 25.2 shares of Class B Common Stock with such shares having all the rights and privileges of Class B Common Stock as set forth in this Certificate (the "***Stock Reclassification***"). No fractional shares shall be issued in connection with the Reclassification. Stockholders who otherwise would be entitled to receive fractional shares of Class B Common Stock shall be entitled to receive cash (without interest or deduction) from the Corporation's transfer agent in lieu of such fractional shares interests upon the submission of a transmission letter by a stockholder holding the shares in book-entry form and, where shares are held in certificated form, upon the surrender of the stockholder's Old Certificates (as defined below), in an amount equal to the fair market value of such shares of Class B Common Stock, as determined by the Board of Directors in its sole discretion. Each certificate that immediately prior to the Effective Time represented shares of common stock, par value $0.001 per share, of the Corporation ("***Old Certificates***") shall thereafter represent that number of shares of Class B Common Stock into which the shares of common stock, par value $0.001 per share of the Corporation represented by the Old Certificate shall have been reclassified, subject to the elimination of fractional share interests as described above.

Section 4.2 Common Stock.

(a) *Voting Rights*.

1. Except as otherwise provided in this Certificate or otherwise required by applicable law, the holders of shares of Class A Common Stock and Class B Common Stock shall at all times vote together as one class on all matters (including the election of directors) submitted to a vote or to be acted on by consent of the stockholders of the Corporation.
2. Each holder of Class A Common Stock shall be entitled to one vote for each share of Class A Common Stock held as of the applicable record date on any matter that is submitted to a vote or to be acted on by consent of the stockholders of the Corporation.
3. Except as otherwise provided in this Certificate or otherwise required by applicable law, each holder of Class B Common Stock shall be entitled to ten votes for each share of Class B Common Stock held as of the applicable date on any matter that is submitted to a vote or to be acted on by consent of the stockholders of the Corporation.

(b) *Dividends*. Subject to the preferences applicable to any series of Preferred Stock, if any, outstanding at any time, the holders of Class A Common Stock and the holders of Class B Common Stock shall be entitled to share equally, on a per share basis, in such dividends and other distributions of cash, property or shares of stock of the Corporation as may be declared by the board of directors of the Corporation (the "***Board***") from time to time with respect to the Common Stock out of assets or funds of the Corporation legally available therefor; provided, however, that in the event that such dividend is paid in the form of shares of Common Stock or rights to acquire Common Stock, the holders of Class A Common Stock shall receive Class A Common Stock or rights to acquire Class A Common Stock, as the case may be, and the holders of Class B Common Stock shall receive Class B Common Stock or rights to acquire Class B Common Stock, as the case may be. Notwithstanding the foregoing, the Board may pay or make a disparate dividend or distribution per share of Class A Common Stock or Class B Common Stock (whether in the amount of such dividend or distribution payable per share, the form in which such dividend or distribution is payable, the timing of the payment, or otherwise) if such disparate dividend or distribution is approved in advance by the affirmative vote (or written consent) of the holders of a majority of the outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class.

(c) *Liquidation*. Subject to the preferences applicable to any series of Preferred Stock, if any, outstanding at any time, in the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the Corporation, all assets of the Corporation of whatever kind available for distribution to the holders of Common Stock shall be divided among and paid ratably to the holders of the Class A Common Stock and the Class B Common Stock treated as a single class unless disparate or different treatment of the shares of each such class with respect to distributions upon any such liquidation, dissolution, distribution of assets or winding up is approved in advance by the affirmative vote (or written consent) of the holders of a majority of the outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class.

(d) *Subdivision or Combination*. If the Corporation in any manner subdivides or combines the outstanding shares of one class of Common Stock, the outstanding shares of the other class of Common Stock will be subdivided or combined in the same manner; provided, however, that shares of one such class of Common Stock may be subdivided or combined in a different or disproportionate manner if such subdivision or combination is approved in advance by the affirmative vote (or written consent) of the holders of a majority of the outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class.

(e) *Equal Status*. Except as expressly provided in this Article IV, Class A Common Stock and Class B Common Stock shall have the same rights and privileges and rank equally (including as to dividends and distributions, and upon any liquidation, dissolution, distribution of assets or winding up of the Corporation), share ratably and be identical in all respects as to all matters.

(f) *Conversion of Class B Common Stock*.

1. Voluntary Conversion. Each share of Class B Common Stock shall be convertible into one fully paid and nonassessable share of Class A Common Stock at the option of the holder thereof. Before any holder of Class B Common Stock shall be entitled voluntarily to convert any shares of such Class B Common Stock, such holder shall surrender the certificate or certificates therefor (if any), duly endorsed, at the principal corporate office of the Corporation or of any transfer agent for the Class B Common Stock, and shall give written notice to the Corporation at its principal corporate office of the election to convert the same and shall state therein the name or names (a) in which the certificate or certificates representing the shares of Class A Common Stock into which the shares of Class B Common Stock are so converted are to be issued if such shares are certificated or (b) in which such shares are to be registered in book entry if such shares are uncertificated. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Class B Common Stock, or to the nominee or nominees of such holder, a certificate or certificates representing the number of shares of Class A Common Stock to which such holder shall be entitled as aforesaid (if such shares are certificated) or, if such shares are uncertificated, register such shares in book-entry form. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Class B Common Stock to be converted following or contemporaneously with the written notice of such holder's election to convert, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock as of such date. Each share of Class B Common Stock that is converted pursuant to this Section 4.2(f)(1) shall be retired by the Corporation and shall not be available for reissuance.
2. Automatic Conversion. (a) Each share of Class B Common Stock shall automatically, without further action by the holder thereof, be converted into one fully paid and nonassessable share of Class A Common Stock upon the occurrence of a Transfer (as defined below), other than a Permitted Transfer (as defined below), of such share of Class B Common Stock, and (b) all shares of Class B Common Stock shall automatically, without further action by any holder thereof, be converted into an identical number of shares of fully paid and nonassessable Class A Common Stock upon the affirmative vote (or written consent) of the holders of a majority of the then-outstanding shares Class B Common Stock, voting as a separate class (the occurrence of an event described in clause (a) or (b) of this Section 4.2(f)(2), a "***Conversion Event***"). Each outstanding stock certificate that, immediately prior to a Conversion Event, represented one or more shares of Class B Common Stock subject to such Conversion Event shall, upon such Conversion Event, be deemed to represent an equal number of shares of Class A Common Stock, without the need for surrender or exchange thereof. The Corporation, or any transfer agent of the Corporation, shall, upon the request of any holder whose shares of Class B Common Stock have been converted into shares of Class A Common Stock as a result of a Conversion Event and upon surrender by such holder to the Corporation of the outstanding certificate(s) formerly representing such holder's shares of Class B Common Stock (if any), issue and deliver to such holder certificate(s) representing the shares of Class A Common Stock into which such holder's shares of Class B Common Stock were converted as a result of such Conversion Event (if such shares are certificated) or, if such shares are uncertificated, register such shares in book-entry form. Each share of Class B Common Stock that is converted pursuant to this Section 4.2(f)(2) shall thereupon be retired by the Corporation and shall not be available for reissuance.

3. The Corporation may, from time to time, establish such policies and procedures, not in violation of applicable law or the other provisions of this Certificate, relating to the conversion of the Class B Common Stock into Class A Common Stock, as it may deem necessary or advisable in connection therewith. If the Corporation has a reasonable basis to believe that a Transfer giving rise to a conversion of shares of Class B Common Stock into Class A Common Stock has occurred but has not theretofore been reflected on the books of the Corporation, the Corporation may request in writing that the holder of such shares furnish affidavits or other reasonable evidence to the Corporation

as the Corporation deems necessary to determine whether a conversion of shares of Class B Common Stock to Class A Common Stock has occurred and if such holder does not, within thirty days after receipt of such written request, furnish reasonable evidence to the Corporation to enable the Corporation to determine that no such conversion has occurred, any such shares of Class B Common Stock, to the extent not previously converted, shall be automatically converted into shares of Class A Common Stock and the same shall thereupon be registered on the books and records of the Corporation. In connection with any action of stockholders taken at a meeting or by written consent, the stock ledger of the Corporation shall be presumptive evidence as to who are the stockholders entitled to vote in person or by proxy at any meeting of stockholders or in connection with any such written consent and the class or classes or series of shares held by each such stockholder and the number of shares of each class or classes or series held by such stockholder.

4. Reservation of Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Class B Common Stock, such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock into shares of Class A Common Stock.

5. Protective Provisions. The Corporation shall not, whether by merger, consolidation or otherwise, amend, alter, repeal or waive thisSection 4.2 (or adopt any provision inconsistent therewith) or effect any reclassification of the shares of Class A Common Stock or Class B Common Stock , unless such action is first approved by the affirmative vote (or written consent) of the holders of a majority of the then-outstanding shares of Class B Common Stock, voting as a separate class, in addition to any other vote required by applicable law, this Certificate or the Bylaws (as defined in Article V), and, to the fullest extent permitted by law, the holders of Class A Common Stock shall have no right to vote thereon.

(g) *Definitions*. For purposes of this Article IV:

1. "***Affiliate***" shall mean, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person, and shall include any principal, managing member, director, general partner, officer, employee or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation).

2. "***control***" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, by contract or otherwise.

3. "***SunTx Permitted Holder***" shall mean SunTx Capital Management Corp. ("***SunTx***") and its Affiliates.

4. "***Permitted Transfer***" shall mean a Transfer by a holder of Class B Common Stock to any of the persons or entities listed below (each, a "***Permitted Transferee***") and from any such Permitted Transferee back to such holder of Class B Common Stock and/or any other Permitted Transferee established by or for such holder of Class B Common Stock:

(A) a broker or other nominee; provided that the transferor, immediately following such Transfer, retains (1) Voting Control, (2) control over the disposition of such shares, and (3) the economic consequences of ownership of such shares;

(B) by a holder of Class B Common Stock who is a natural person to any of the following Permitted Transferees:

(1) a trust for the benefit such holder or other persons so long as the holder (either alone or with any Family Member of such holder) retains: (i) Voting Control, (ii) control over the disposition of such shares, and (iii) such Transfer does not involve any payment of cash, securities, property or other consideration (other than an interest in such trust) to the holder; provided that in the event such holder (either alone or with any Family Member of such holder) no longer retains Voting Control and control over the disposition of the shares of Class B Common Stock held by such trust, each

share of Class B Common Stock then held by such trust shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock;

(2) a Family Member; provided such Transfer does not involve any payment of cash, securities, property or other consideration to the holder;

(3) a trust under the terms of which such holder has retained a "qualified interest" within the meaning of Section 2702(b)(1) of the Internal Revenue Code of 1986, as amended (the "***Internal Revenue Code***"), and/or a reversionary interest so long as the holder (either alone or with any Family Member of such holder) retains Voting Control and control over the disposition of the shares of Class B Common Stock held by such trust; provided, however, that in the event the holder (either alone or with any Family Member of such holder) no longer retains Voting Control and control over the disposition of the shares of Class B Common Stock held by such trust, each share of Class B Common Stock then held by such trust shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock;

(4) an Individual Retirement Account, as defined in Section 408(a) of the Internal Revenue Code, or a pension, profit sharing, stock bonus or other type of plan or trust of which such holder is a participant or beneficiary and which satisfies the requirements for qualification under Section 401 of the Internal Revenue Code; provided that in each case such holder (either alone or with any Family Member of such holder) retains Voting Control and control over the disposition of the shares of Class B Common Stock held in such account, plan or trust, and provided, further, that in the event the holder (either alone or with any Family Member of such holder) no longer retains Voting Control and control over the disposition of the shares of Class B Common Stock held by such account, plan or trust, each share of Class B Common Stock then held by such trust shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock;

(5) a corporation, partnership or limited liability company in which such holder (either alone or with any Family Member of such holder) directly, or indirectly through one or more Permitted Transferees, owns shares, partnership interests or membership interests, as applicable, with sufficient Voting Control in the corporation, partnership or limited liability company, as applicable, or otherwise has legally enforceable rights, such that the holder (either alone or with any Family Member of such holder) retains Voting Control and control over the disposition of the shares of Class B Common Stock held by such corporation, partnership or limited liability company; provided that in the event the holder (either alone or with any Family Member of such holder) no longer owns sufficient shares, partnership interests or membership interests, as applicable, or no longer has sufficient legally enforceable rights to ensure the holder (either alone or with any Family Member of such holder) retains Voting Control and control over the disposition of the shares of Class B Common Stock held by such corporation, partnership or limited liability company, as applicable, each share of Class B Common Stock then held by such corporation, partnership or limited liability company, as applicable, shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock.

(B) a SunTx Permitted Holder; and

(C) any Person approved by a majority of the shares of Class B Common Stock held by SunTx and its Affiliates.

5. "***Family Member***" shall mean, with respect to any Class B Stockholder, (x) the spouse, and any parent, child, sibling, parent-in-law or child-in-law of such stockholder, (y) any individual who shares a home (other than a domestic employee) with such stockholder or (z) any lineal descendent (including by adoption) of any of the foregoing individuals.

6. "***Person***" shall mean any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other entity, whether domestic or foreign.

7. "***Transfer***" (including the term "***Transferred***") of a share of Class B Common Stock shall mean, directly or indirectly, any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition of such

share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law (including by merger, consolidation or otherwise), including, without limitation, the transfer of, or entering into a binding agreement with respect to, Voting Control over such share, by proxy or otherwise. Notwithstanding the foregoing, the following shall not be considered a "Transfer" within the meaning of this Article IV:

(i) the granting by a stockholder of a proxy to (y) officers or directors of the Corporation at the request of the Board, or (z) a representative of such stockholder, in connection with actions to be taken at an annual or special meeting of stockholders or in connection with any action by written consent of the stockholders;

(ii) the pledge of shares of Class B Common Stock by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction for so long as such stockholder continues to exercise Voting Control over such pledged shares; provided, however, that a foreclosure on such shares or other similar action by the pledgee shall constitute a "Transfer" unless such foreclosure or similar action qualifies as a "Permitted Transfer" at such time; or

(iii) any change in the trustees or the Person(s) acting as a fiduciary with respect to a SunTx Permitted Holder having or exercising Voting Control over shares of Class B Common Stock of a SunTx Permitted Holder; provided that following such change such SunTx Permitted Holder continues to be a Permitted Holder.

8. "***Voting Control***" shall mean, with respect to a share of Class B Common Stock, the power (whether exclusive or shared) to vote or direct the voting of such share by proxy, voting agreement or otherwise.

Section 4.3 Preferred Stock.

(a) Shares of Preferred Stock may be issued in one or more series from time to time, with each such series to consist of such number of shares and to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the Board and included in a certificate of designations (a "***Preferred Stock Designation***") filed pursuant to the DGCL, and the Board is hereby expressly vested with the authority, to the full extent now or hereafter provided by law, to adopt any such resolution or resolutions. The authority of the Board with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

1. the number of shares constituting that series and the distinctive designation of that series;

2. the dividend rate or rates on the shares of that series, the terms and conditions upon which and the periods in respect of which dividends shall be payable, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

3. whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

4. whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board shall determine;

5. whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in the event of redemption, which amount may vary under different conditions and at different redemption dates;

6. whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;

7. the rights of the shares of that series in the event of voluntary or involuntary liquidation, distribution of assets, dissolution or winding up of the corporation, and the relative rights of priority, if any, of payment of shares of that series; and

8. any other relative rights, powers, and preferences, and the qualifications, limitations and restrictions thereof, of that series.

(b) Except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate (including any certificate of designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate (including any certificate of designation relating to any series of Preferred Stock) or pursuant to the DGCL.

(c) Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled to only such voting rights, if any, as shall expressly be granted thereto by this Certificate (including any certificate of designation relating to such series of Preferred Stock).

ARTICLE V
AMENDMENT OF THE CERTIFICATE OF INCORPORATION AND BYLAWS

Section 5.1 Notwithstanding anything contained in this Certificate to the contrary, once no shares of Class B Common Stock remain outstanding, the following provisions in this Certificate may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2⁄3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class: this Article V, Article VI, Article VII, Article VIII, Article IX and Article X. For the purposes of this Certificate, beneficial ownership of shares shall be determined in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***") (except, for the avoidance of doubt, holders of Class B Common Stock will not be deemed to be beneficial owners of Class A Common Stock).

Section 5.2 The Board is expressly authorized to make, repeal, alter, amend and rescind, in whole or in part, the amended and restated bylaws of the Corporation (as in effect from time to time, the "***Bylaws***") without the assent or vote of the stockholders . For so long as shares of Class B Common Stock remain outstanding, the affirmative vote of the holders of a majority in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith. Notwithstanding anything to the contrary contained in this Certificate or any provision of law which might otherwise permit a lesser vote of the stockholders, once no shares of Class B Common Stock remain outstanding, in addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any certificate of designation relating to any series of Preferred Stock), the Bylaws or applicable law, the affirmative vote of the holders of at least 66 2⁄3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith.

ARTICLE VI
BOARD OF DIRECTORS

Section 6.1 Number, Election and Term.

(a) The number of directors constituting the Board shall be not fewer than one (1) and not more than fifteen (15). Subject to the previous sentence, the precise number of directors, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately by class or series, shall be fixed from time to time exclusively pursuant to a resolution adopted by the Board.

(b) Subject to Section 6.4, the directors shall be divided with respect to the time for which they hold office into three classes, as nearly equal in number as possible and designated Class I, Class II and Class III. The initial division of the Board into classes shall be made by the Board. The term of the initial Class I Directors shall expire at the first annual meeting of stockholders of the Corporation following the filing of this Certificate; the term of the initial Class II Directors shall expire at the second annual meeting of stockholders following the filing of this Certificate; and the term of the initial Class III Directors shall expire at the third annual meeting of stockholders following the filing of this Certificate. At each annual meeting of stockholders beginning with the first annual meeting of stockholders following the filing of this Certificate, successors to the class of directors whose term expires at that annual meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders to be held in the third year following the year of their election. Subject to Section 6.4, if the number of directors is changed, any increase or decrease shall be apportioned by the Board among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director.

(c) Subject to Section 6.4, a director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

(d) Unless and except to the extent that the By-Laws shall so require, the election of directors need not be by written ballot.

Section 6.2 Newly Created Directorships and Vacancies.

Subject to Section 6.4, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled by a majority vote of the directors then in office, even if less than a quorum, or by a sole remaining director or by the stockholders; provided, however, that once no shares of Class B Common Stock remain outstanding, any newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely by a majority vote of the directors then in office, even if less than a quorum, or by a sole remaining director (and not by the stockholders). Any director so chosen shall hold office for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

Section 6.3 Removal.

Subject to Section 6.4, any or all of the directors may be removed from office at any time either with or without cause by the affirmative vote of a majority in voting power of all outstanding shares of stock of the Corporation entitled to vote thereon, voting as a single class; provided, however, that once no shares of Class B Common Stock remain outstanding, any such director or all such directors may be removed only for cause and only by the affirmative vote of the holders of at least 66 2⁄3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class.

Section 6.4 Preferred Stock – Directors.

Notwithstanding any other provision of this Article VI, and except as otherwise required by law, whenever the holders of one or more series of Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of Preferred Stock as set forth in this Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this Article VI unless expressly provided by such terms.

ARTICLE VII
CONSENT OF STOCKHOLDERS IN LIEU OF MEETING; SPECIAL MEETINGS OF STOCKHOLDERS

Section 7.1 Consent of Stockholders in Lieu of Meeting.

For as long as shares of Class B Common Stock remain outstanding, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand, overnight courier or by certified or registered mail, return receipt requested. Once no shares of Class B Common Stock remain outstanding, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders; provided, however, that any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock.

Section 7.2 Special Meetings.

Except as otherwise required by law or the terms of any one or more series of Preferred Stock, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, Chief Executive Officer, or the Board; provided, however, that special meetings of the stockholders of the Corporation for any purpose or purposes shall also be called at the request of the holders of 25% of the Class B Common Stock. The ability of holders of Class A Common Stock to call a special meeting is hereby specifically denied.

ARTICLE VIII
LIMITATION OF DIRECTOR LIABILITY; INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 8.1 Limitation of Director and Officer Liability.

To the fullest extent that the DGCL or any other law of the State of Delaware as the same exists or is hereafter amended permits the limitation or elimination of the liability of directors or officers, no person who is or was a director or officer of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director or officer. Any repeal or amendment of this Section 8.1 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors or officers) and shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

Section 8.2 Indemnification and Advancement of Expenses.

(a) To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***proceeding***") by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an "***indemnitee***"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all expenses, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection with such proceeding. The right to indemnification conferred by this Section 8.2 shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition; provided, however, that, if the DGCL requires, an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the indemnitee is not entitled to be indemnified for the expenses under this Section 8.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 8.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 8.2, except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) The rights to indemnification and advancement of expenses conferred on any indemnitee by this Section 8.2 shall not be exclusive of any other rights that any indemnitee may have or hereafter acquire under law, this Certificate, the By-Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate inconsistent with this Section 8.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than indemnitees.

ARTICLE IX
COMPETITION AND CORPORATE OPPORTUNITIES

Section 9.1 In recognition and anticipation that (i) certain directors, principals, members, officers, associated funds, employees and/or other representatives of SunTx and its Affiliates (as defined below) may serve as directors, officers or agents of the Corporation, (ii) SunTx and its Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (iii) members of the Board who are not employees of the Corporation ("***Non-Employee Directors***") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article IX are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of SunTx, the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

Section 9.2 None of (i) SunTx or any of its Affiliates or (ii) any Non-Employee Director or his or her Affiliates (the Persons (as defined below) identified in (i) and (ii) above being referred to, collectively, as "***Identified Persons***" and, individually, as an "***Identified Person***") shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 9.4. Subject to said Section 9.4, in the event that any Identified Person acquires knowledge of a potential transaction or other matter or business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no fiduciary duty or other duty (contractual or otherwise) to communicate, present or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty or other duty (contractual or otherwise) as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, offers or directs such corporate opportunity to another Person, or does not present such corporate opportunity to the Corporation or any of its Affiliates.

Section 9.3 The Corporation and its Affiliates do not have any rights in and to the business ventures of any Identified Person, or the income or profits derived therefrom, and the Corporation agrees that each of the Identified Persons may do business with any potential or actual customer or supplier of the Corporation or may employ or otherwise engage any officer or employee of the Corporation.

Section 9.4 The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director if such opportunity is expressly offered to such person in writing solely in his or her capacity as a director of the Corporation, and the provisions of Section 9.2 shall not apply to any such corporate opportunity.

Section 9.5 In addition to and notwithstanding the foregoing provisions of this Article IX, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (iii) is one in which the Corporation has no interest or reasonable expectancy.

Section 9.6 For purposes of this Article IX, (i) "***Affiliate***" shall mean (a) in respect of SunTx, any Person that, directly or indirectly, is controlled by SunTx, controls SunTx or is under common control with SunTx and shall include any principal, member, director, partner, stockholder, officer, employee or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), (b) in respect of a Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (c) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; and (ii) "***Person***" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

Section 9.7 To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article IX. Neither the alteration, amendment, addition to or repeal of this Article IX, nor the adoption of any provision of this Certificate (including any certificate of designation relating to any series of Preferred Stock) inconsistent with this Article IX, shall eliminate or reduce the effect of this Article IX in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article IX, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption.

ARTICLE X
DGCL AND BUSINESS COMBINATIONS

Section 10.1 The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

Section 10.2 Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Class A Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

(a) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

(b) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(c) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2⁄3% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

Section 10.3 For purposes of this Article X, references to:

(a) "***affiliate***" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(b) "***associate***," when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(c) "***SunTx Direct Transferee***" means any person that acquires (other than in a registered public offering or through a broker's transaction executed on any securities exchange or other over-the-counter market) directly from SunTx or any of its affiliates or successors or any "group", or any member of any such group, of which such persons are a party under Rule 13d-5 of the Exchange Act beneficial ownership of 5% or more of the then-outstanding voting stock of the Corporation.

(d) "***SunTx Indirect Transferee***" means any person that acquires (other than in a registered public offering or through a broker's transaction executed on any securities exchange or other over-the-counter market) directly from any

SunTx Direct Transferee or any other SunTx Indirect Transferee beneficial ownership of 5% or more of the then-outstanding voting stock of the Corporation.

(e) "***business combination***," when used in reference to the Corporation and any interested stockholder of the Corporation, means:

1. any merger or consolidation of the Corporation (other than a merger effected under Section 253 or Section 267 of the DGCL) or any direct or indirect majority-owned subsidiary of the Corporation (a) with the interested stockholder, or (b) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section 10.2 is not applicable to the surviving entity;

2. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

3. any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (a) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (b) pursuant to a merger under Section 251(g) or Section 253 or Section 267 of the DGCL; (c) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (d) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (e) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (c)-(e) of this Section 10.3(e)(3) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

4. any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

5. any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in Sections 10.3(e)(1)-(4) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(f) "***control***," including the terms "***controlling***," "***controlled by***" and "***under common control with***," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of the Corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Article X, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(g) "***interested stockholder***" means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder, and the affiliates and associates of such person; provided, however, that "interested stockholder" shall not include or be deemed to include, in any case, (a) SunTx, any SunTx Direct Transferee, any SunTx Indirect Transferee or any of their respective affiliates or successors or any "group", or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, or (b) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation, provided further that such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of "owner" below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(h) "***owner***," including the terms "***own***" and "***owned***," when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

1. beneficially owns such stock, directly or indirectly; or

2. has (a) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (b) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or

3. has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (b) of Section 10.3(h)(2) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

(i) "***person***" means any individual, corporation, partnership, unincorporated association or other entity.

(j) "***stock***" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(k) "***voting stock***" means stock of any class or series entitled to vote generally in the election of directors.

ARTICLE XI
FORUM FOR ADJUDICATION OF DISPUTES

Section 11.1 Exclusive Forum.

Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware), provided in each such case that such court has personal jurisdiction over the indispensible parties named as defendants.

Section 11.2 Stockholder Consent to Personal Jurisdiction.

If any action the subject matter of which is within the scope of Section 11.1 above is filed in a court other than a court located within the State of Delaware (a "***Foreign Action***") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 11.1 above (an "***FSC Enforcement Action***") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

Exhibit 31.1

CERTIFICATION

I, Fred J. Smith, III, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Construction Partners, Inc. for the quarterly period ended June 30, 2023;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2023

By: /s/ Fred J. Smith, III

Fred J. Smith, III
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Gregory A. Hoffman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Construction Partners, Inc. for the quarterly period ended June 30, 2023;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2023

By: /s/ Gregory A. Hoffman
Gregory A. Hoffman
Senior Vice President and Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Construction Partners, Inc. (the "Company") for the period ended June 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Fred J. Smith, III, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 8, 2023

By: /s/ Fred J. Smith, III
Fred J. Smith, III
President and Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Construction Partners, Inc. (the “Company”) for the period ended June 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Gregory A. Hoffman, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 8, 2023

By: /s/ Gregory A. Hoffman
Gregory A. Hoffman
Senior Vice President and Chief Financial Officer

Exhibit 95.1

Mine Safety Disclosures

The operation of our aggregates mines is subject to regulation by the federal Mine Safety and Health Administration (the "MSHA") under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.* (the "Mine Act"). Set forth below is the required information regarding certain mining safety and health matters for the fiscal quarter ended June 30, 2023. Citations and orders may be contested and appealed, and in that process, may be reduced in severity and amount, and are sometimes dismissed. The table below includes references to specific sections of the Mine Act.

The information in the table below is presented by mine, consistent with the manner in which we maintain safety and compliance information about our mining operations.

	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Mine Name / ID	Section 104 S&S	Section 104(b)	Section 104(d)	Section 110(b)(2)	Section 107(a)	Proposed Assessments	Fatalities	Pending Legal Action
Ashville / 01-03234	1	—	—	—	—	$ 1,767	—	—
Drummond / 01-03126	—	—	—	—	—	—	—	—
Blount Springs / 01-03047	—	—	—	—	—	$ 143	—	—
Battleground / 01-03100	—	—	—	—	—	—	—	—
Camden / 31-02100	—	—	—	—	—	—	—	—
Riverbend Sand / 09-01023	—	—	—	—	—	—	—	—
Montgomery Sand / 09-00737	—	—	—	—	—	—	—	—
Baldree Sand / 09-01166	—	—	—	—	—	—	—	—
Coosa / 01-03327	—	—	—	—	—	*	—	—
Skyline / 01-03158	—	—	—	—	—	—	—	—
Lambert / 01-03363	1	—	—	—	—	$ 1,229	—	—
Hickory Bend / 01-03403	—	—	—	—	—	—	—	—
Allstate / 01-03406	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	$ 3,139	—	—

(A) The total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under Section 104 of the Mine Act for which the operator received a citation from the MSHA.

(B) The total number of orders issued under Section 104(b) of the Mine Act.

(C) The total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under Section 104(d) of the Mine Act.

(D) The total number of flagrant violations under Section 110(b)(2) of the Mine Act.

(E) The total number of imminent danger orders issued under Section 107(a) of the Mine Act.

(F) The total dollar value of proposed assessments from the MSHA under the Mine Act. As of the date of this report, no proposed assessments related to the orders or citations listed above had yet been posted to the MSHA Mine Data Retrieval System or made available to the Company by MSHA.

(G) The total number of mining-related fatalities.

(H) Any pending legal action before the Federal Mine Safety and Health Review Commission involving the applicable mine(s).

* As of the date of this report, no proposed assessments related to orders or citations received during the quarter had yet been posted to the MSHA Mine Data Retrieval System or made available to the Company by MSHA.

During the fiscal quarter ended June 30, 2023, our aggregates mines did not receive any written notices of a pattern of violations, or the potential to have such a pattern of violations, under Section 104(e) of the Mine Act.