

STERLING CONSTRUCTION CO INC
Form 10-K/A
April 04, 2016

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

**[X] annual report pursuant to section 13 or 15(d) of the securities
exchange act of 1934**

For the fiscal year ended: December 31, 2015

**[] 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 **1-31993**
STERLING CONSTRUCTION COMPANY, INC.

(Exact name of registrant as specified in its charter)
Delaware

State or other jurisdiction of
incorporation or organization

25-1655321
(I.R.S. Employer
Identification No.)

1800 Hughes Landing Blvd.

The Woodlands, Texas **77380**

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code **(281) 214-0800**

Securities registered pursuant to Section 12(b) of the Act: Name of each
exchange on
Title of each class which registered

Common Stock, \$0.01 par value per share **The NASDAQ
Stock Market**

(Title of Class)

LLC

Securities registered pursuant to section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

☐ Yes ☒ No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

☐ Yes ☒ No

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 and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter prior that the registrant was required to submit and post such files).

☒ Yes ☐ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K ☒

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

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

Indicate by check mark if the registrant is a shell company (as defined in Rule 12b-2 of the Act). ☐ Yes ☒ No
Aggregate market value of the voting

and
non-voting
common
equity held
by
non-affiliates
at June 30,
2015:
\$74,202,960.
At March 4,
2016, the
registrant had
19,773,170
shares of
common
stock
outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Company's definitive Proxy Statement to be filed with the Securities and Exchange Commission and delivered to stockholders in connection with the Annual Meeting of Stockholders to be held on May 6, 2016 are incorporated by reference into Part III of this Form 10-K

Explanatory Note

This Amendment No. 1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2015 (the "*Original Filing*") is being filed to correct certain inadvertent errors and omissions in the information and exhibits contained in the Exhibit List under Item 15 and in the Exhibit Index, as follows:

- (a) To remove Exhibit 10.1 of the Original Filing because it duplicates Exhibit 10.8.3 of the Original Filing.
- (b) To change the number of the second exhibit numbered 10.1.1 in the Original Filing to Exhibit 10.13 and to file the same.
- (c) To change the number of the second exhibit numbered 10.1.2 in the Original Filing to Exhibit 10.14 and to file the same.
- (d) To delete Exhibit 10.6 of the Original Filing because it has not been in effect for more than two years.
- (e) To correct certain incorporation by reference information in Exhibits 10.5.1 and 10.8.4 in the Original Filing.
- (f) To delete the incorporation by reference information in Exhibit 10.9.3 in the Original Filing and to file the same.
- (g) To list and file new exhibits numbered 10.13.1 and 10.15 through 10.21, a series of exhibits related to the Company's two 50%-owned affiliates that were omitted from the Original Filing.

No other changes have been made to the Original Filing.

Item 15. Exhibits and Financial Statement Schedules.

The following Financial Statements and Financial Statement Schedules are filed with this Report:

Financial Statements:

Reports of the Company's Independent Registered Public Accounting Firm

Consolidated Balance Sheets as of December 31, 2015 and 2014

Consolidated Statements of Operations for the years ended December 31, 2015, 2014 and 2013

Consolidated Statements of Comprehensive Loss for the years ended December 31, 2015, 2014 and 2013

Consolidated Statements of Cash Flows for the years ended December 31, 2015, 2014 and 2013

Consolidated Statements of Stockholders' Equity for the years ended December 31, 2015, 2014 and 2013

Financial Statement Schedules.

None.

Exhibits.

The following exhibits are filed with this Report.

Explanatory Note

Prior to changing its name to Sterling Construction Company, Inc. in November 2001, the Company's name was Oakhurst Company, Inc. References in the following exhibit list use the name of the Company in effect at the date of the exhibit.

Number Exhibit Title

- 2.1.1 Purchase Agreement, dated as of December 3, 2009, by and among Kip Wadsworth, Ty Wadsworth, Con Wadsworth, Tod Wadsworth and Sterling Construction Company, Inc. (incorporated by reference to Exhibit 2.1 to Sterling Construction Company, Inc.'s Current Report on Form 8-K, filed on December 3, 2009 (SEC File No. 1-31993)).
- 3.1 Certificate of Incorporation of Sterling Construction Company, Inc. as amended through May 9, 2014 (incorporated by reference to Exhibit 3 to Sterling Construction Company, Inc.'s Current Report on Form 8-K, filed on May 13, 2014 (SEC File No. 1-31993)).
- 3.2* Bylaws of Sterling Construction Company, Inc. as amended through March 11, 2016.
- 4.1 Form of Common Stock Certificate of Sterling Construction Company, Inc. (incorporated by reference to Exhibit 4.5 to Sterling Construction Company, Inc.'s Form 8-A, filed on January 11, 2006 (SEC File No. 1-31993)).
- 10.1.1# The Sterling Construction Company, Inc. Stock Incentive Plan as amended through May 9, 2014 (incorporated by reference to Exhibit 10.2 to Sterling Construction Company, Inc.'s Current Report on Form 8-K, filed on May 13, 2014 (SEC File No. 1-31993)).
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- 10.2# Forms of Stock Option Agreement under the Oakhurst Company, Inc. 2001 Stock Incentive Plan (now known as The Sterling Construction Company, Inc. Stock Incentive Plan) (incorporated by reference to Exhibit 10.52 to Sterling Construction Company, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2004, filed on March 29, 2005 (SEC File No. 1-31993)).
- 10.3*# Standard compensation arrangements for non-employee directors of Sterling Construction Company, Inc. adopted by the Board of Directors to be effective March 1, 2016.
- 10.4.9 Loan and Security Agreement dated as of May 29, 2015 between Nations Fund I, LLC, Nations Equipment Finance, LLC, as administrative and collateral agent, Sterling Construction Company, Inc. and its wholly-owned subsidiaries (incorporated by reference to Exhibit 10.1 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on June 3, 2015 (SEC File No. 1-31993)).
- 10.4.10 Term Loan Promissory Note dated May 29, 2015 in the amount of \$20,000,000 (incorporated by reference to Exhibit 10.2 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on June 3, 2015 (SEC File No. 1-31993)).
- 10.4.11 Revolving Loan Promissory Note dated May 29, 2015 in the amount of \$20,000,000 (incorporated by reference to Exhibit 10.3 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on June 3, 2015 (SEC File No. 1-31993)).

- 10.4.12 Security Agreement dated as of May 29, 2015 between Nations Fund I, LLC, Nations Equipment Finance, LLC, as administrative and collateral agent, Road and Highway Builders, LLC, and Myers & Sons Construction, L.P. (incorporated by reference to Exhibit 10.4 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on June 3, 2015 (SEC File No. 1-31993)).
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- 10.4.14 Real Property Waiver dated May 29, 2015 between Nations Equipment Finance, LLC as administrative and collateral agent, and Texas Sterling Construction Co. relating to 5638 FM 1346, San Antonio, Texas (incorporated by reference to Exhibit 10.6 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on June 3, 2015 (SEC File No. 1-31993)).
- 10.4.15 Real Property Waiver dated May 29, 2015 between Nations Equipment Finance, LLC as administrative and collateral agent and Texas Sterling Construction Co. relating to 20810 Fernbush Ln., Houston, Texas (incorporated by reference to Exhibit 10.7 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on June 3, 2015 (SEC File No. 1-31993)).
- 10.4.16 Intercreditor Agreement dated as of May 29, 2015 among Nations Equipment Finance, LLC, as administrative and collateral agent, Nations Fund I, LLC, and Sterling Construction Company, Inc. and its wholly-owned subsidiaries (incorporated by reference to Exhibit 10.8 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on June 3, 2015 (SEC File No. 1-31993)).
- 10.5.1# Employment Agreement dated as of March 17, 2006 between Sterling Construction Company, Inc. and Roger M. Barzun (incorporated by reference to Exhibit 10.11 to Sterling Construction Company, Inc.'s Annual Report on Form 10-K/A for the year ended December 31, 2008, filed on March 16, 2009 (SEC File No. 1-31993)).
- 10.5.2# Amendment dated January 18, 2012 of the Employment Agreement dated as of March 17, 2006 between Sterling Construction Company, Inc. and Roger M. Barzun (incorporated by reference to Exhibit 10.7.1 to Sterling Construction Company, Inc.'s Annual Report on Form 10-K filed on March 17, 2014 (SEC File No. 1-31993)).
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- 10.8.3# Separation & Release Agreement executed on July 3, 2015 between Thomas R. Wright and Sterling Construction Company, Inc. (incorporated by reference to Exhibit 10.1 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on July 7, 2015 (SEC File No. 1-31993)).

- 10.8.4# Employment arrangement of Ronald A. Ballschmiede (incorporated by reference to the description contained in Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on November 12, 2015 (SEC File No. 1-31993)).
- 10.9.1# Program Description — 2015 Short-Term Incentive Compensation Program & 2015 Long-Term Incentive Compensation Program (incorporated by reference to Exhibit 10.1 to Sterling Construction Company, Inc.'s Current Report on Form 8-K filed on December 17, 2014 (SEC File No. 1-31993))
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- 10.9.3#** Amended form of Long-Term Incentive Program Award Agreement.
- 10.10# Employment Agreement dated as of March 9, 2015 between Sterling Construction Company, Inc. and Paul J. Varello (incorporated by reference to Exhibit 10.10 to Sterling Construction Company, Inc.'s Annual Report on Form 10-K filed on March 16, 2015 (SEC File No. 1-31993)).
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- 10.14** Call Option Agreement, dated as of May 29, 2015, by and between Richard H. Buening and Sterling Construction Company, Inc.
- 10.15** Fourth Amended and Restated Operating Agreement of Road and Highway Builders, LLC dated as of October 19, 2015.
- 10.15.1** Amendment No. 1 to Fourth Amended and Restated Operating Agreement of Road and Highway Builders, LLC dated as of November 28, 2015.
- 10.16** Second Amended and Restated Limited Partnership Agreement of Myers & Sons Construction, L.P. dated as of November 19, 2015.
- 10.17** Secured Revolving Promissory Note made by Sterling Construction Company, Inc. dated March 11, 2016 payable to Road and Highway Builders, LLC and Myers & Sons Construction, L.P.
- 10.18** Deed of Trust and Security Agreement dated March 11, 2016 between Texas Sterling Construction Co.; Road and Highway Builders, LLC; and Myers & Sons Construction, L.P. relating to 20800 Fernbush Lane, Houston, Texas.
- 10.19** Deed of Trust and Security Agreement dated March 11, 2016 between Texas Sterling Construction Co.; Road and Highway Builders, LLC; and Myers & Sons Construction, L.P. relating to 5638 FM 1346, San Antonio, Texas.

- 10.20** Deed of Trust and Security Agreement dated March 11, 2016 between Texas Sterling Construction Co.; Road and Highway Builders, LLC; and Myers & Sons Construction, L.P. relating to St. Hedwig Road, San Antonio, Texas.
- 10.21** Deed of Trust and Security Agreement dated March 11, 2016 between Texas Sterling Construction Co.; Road and Highway Builders, LLC; and Myers & Sons Construction, L.P. relating to 3475 High River Road, Fort Worth, Texas.
- 21 Subsidiaries of Sterling Construction Company, Inc.:

<u>Name</u>	<u>State of Incorporation or Organization</u>
Texas Sterling Construction Co.	Delaware
Texas Sterling – Banicki, JV LLC	Texas
Road and Highway Builders, LLC	Nevada
Road and Highway Builders Inc.	Nevada
RHB Properties, LLC	Nevada
Road and Highway Builders of California, Inc.	California
Sterling Hawaii Asphalt, LLC	Hawaii
Ralph L. Wadsworth Construction Company, LLC	Utah
Ralph L. Wadsworth Construction Co. LP	California
J. Banicki Construction, Inc.	Arizona
Myers & Sons Construction, L.P.	California

- 23.1* Consent of Grant Thornton LLP.
- 31.1** Certification of Paul J. Varello, Chief Executive Officer of Sterling Construction Company, Inc.
- 31.2** Certification of Ronald A. Ballschmiede, Executive Vice President & Chief Financial Officer of Sterling Construction Company, Inc.
- 32.1* Certification pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) of Paul J. Varello Chief Executive Officer, and Ronald A. Ballschmiede, Executive Vice President & Chief Financial Officer of Sterling Construction Company, Inc.
- 95.1* Mine Safety Disclosure.
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema Document
- 101.CAL XBRL Extension Calculation Linkbase Document
- 101.DEF XBRL Taxonomy Extension Definition Linkbase Document
- 101.LAB XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

Management contract or compensatory plan or arrangement.

* Filed with the Original Filing.

** Filed with this Form 10-K/A.

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.

Sterling Construction Company, Inc.

Date: April 4, 2016 By: /s/ Ronald A. Ballschmiede
Ronald A. Ballschmiede,
Executive Vice President & Chief Financial Officer
(duly authorized officer)

Exhibit Index

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<u>Name</u>	<u>State of Incorporation or Organization</u>
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Road and Highway Builders Inc.	Nevada
RHB Properties, LLC	Nevada
Road and Highway Builders of California, Inc.	California
Sterling Hawaii Asphalt, LLC	Hawaii
Ralph L. Wadsworth Construction Company, LLC	Utah
Ralph L. Wadsworth Construction Co. LP	California
J. Banicki Construction, Inc.	Arizona
Myers & Sons Construction, L.P.	California

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31.1** Certification of Paul J. Varello, Chief Executive Officer of Sterling Construction Company, Inc.

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95.1* Mine Safety Disclosure.

101.INS XBRL Instance Document

101.SCHXBRL Taxonomy Extension Schema Document

101.CALXBRL Extension Calculation Linkbase Document

101.DEF XBRL Taxonomy Extension Definition Linkbase Document

101.LABXBRL Taxonomy Extension Label Linkbase Document

101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

Management contract or compensatory plan or arrangement.

* Filed with the Original Filing.

** Filed with this Form 10-K/A.