Risk Factors Comparison 2024-01-16 to 2022-12-22 Form: 10-K

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Our business is subject to a variety of risks and uncertainties, including, but not limited to, the risk and uncertainties described below. The risks and uncertainties described below are not the only ones we may face. Additional risks and uncertainties not known to us or not described below also may impair our business operations. If any of the following risks actually occur, our business financial condition and results of operations could be impacted, and we may not be able to achieve our expectations, projections, intentions or beliefs about future events that are intended as " forward- looking statements " under Private Securities Litigation Reform Act of 1995 and should be read in conjunction with the section entitled " Forward looking statements ". Risk Related to our ~~OperationsOur~~ --- **Operations Our** operating results may vary significantly from quarter to quarter. We typically experience lower volumes and lower margins during the winter months due to lower demand for our pipeline services and more difficult operating conditions. Also, other items that can materially affect our quarterly results include: ● Adverse weather; ● Variations in the mix of our work in any quarter; ● Shortage of qualified labor; ● Unfavorable regional, national or global economic and market conditions; ● A reduction in the demand for our services; ● Changes in customer spending patterns and need for the services we provide; ● Unanticipated increases in construction and design costs; ● Timing and volume of work we perform; ● Termination of existing agreements; ● Losses experienced not covered by insurance; ● Payment risks associated with customer financial condition; ● Changes in bonding requirements of agreements; ● Supply chain constraints; ● Interest rate variations; and ● Changes in accounting and financial reporting standards. **The restatement of certain of our historical consolidated financial statements may have an adverse effect on us. As disclosed in Amendment No. 1 to the Annual Report on Form 10- K / A for the fiscal year ended September 30, 2022 filed with the SEC on May 31, 2023, the Company restated certain of its audited consolidated financial statements (the " Restatement "). Management has assessed the effect of the Restatement on the Company' s internal control over financial reporting and its disclosure controls and procedures, all as described in Part II, Item 9A, " Controls and Procedures " of the Annual Report on Form 10- K for the fiscal year ended September 30, 2023. As of the date of the filing of the Annual Report on Form 10- K for the fiscal year ended September 30, 2023, we had completed our remediation plan for the material weakness we identified in relation to the Restatement of our financial statements. While management believes that the remedial efforts have resolved the identified material weakness, there is no assurance that such remedial efforts will ultimately have the intended effects or that additional remedial actions will not be necessary. If we identify any new material weakness in the future, any such newly identified material weakness could limit our ability to prevent or detect a misstatement of our accounts or disclosures that could result in a material misstatement of our annual or interim financial statements. In such case, we may be unable to maintain compliance with securities law requirements regarding accurate and timely filing of periodic reports and with applicable NASDAQ listing requirements, investors may lose confidence in our financial reporting, and our stock price may decline as a result. We cannot assure you that the measures we have taken to date, or any measures we may take in the future, will be sufficient to avoid potential future material weaknesses. Additionally, as a result of the material weakness we have identified in our internal controls over financial reporting for the Restatement, as well as other matters raised or that may in the future be raised by the SEC, we may in the future be exposed to litigation or other disputes concerning, among others, claims invoking the federal and state securities laws, SBA claims or other claims arising from the Restatement and the material weakness in our internal control over financial reporting and the preparation of our financial statements. Any such litigation or dispute, regardless of its outcome, could have a material adverse effect on our business, operations, financial condition, results of operations and share price. As a result of the Restatement, we may become subject to a number of significant risks, which could have an adverse effect on our business, financial condition and results of operations, including: we may be subject to potential civil litigation, including shareholder class action lawsuits and derivative claims made on behalf of us, and regulatory proceedings or actions, the defense of which may require us to devote significant management attention and to incur significant legal expense and which litigation, proceedings or actions, if decided against us, could require us to pay substantial judgments, settlements or other penalties.** Future acquisitions could disrupt the Company' s business and adversely affect our results of operations, financial condition and cash flows. In fiscal 2022, the Company completed the acquisitions of Tri- State Paving and Ryan Construction. The Company may choose to expand by making additional acquisitions that could be material to its business, results of operations, financial condition and cash flows. Acquisitions involve many risks, including the following: ● an acquisition may negatively affect the Company' s results of operations, financial condition or cash flows because it may require us to incur charges or assume substantial debt or other liabilities, may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by third parties, or may not generate sufficient financial return to offset additional costs and expenses related to the acquisition; **9** ● the Company may encounter difficulties or unforeseen expenditures in integrating the operations of any company that it acquires, particularly if key personnel of the acquired company decide not to work for us; ● an acquisition may disrupt our ongoing business, divert resources, increase our expenses and distract our management; ● an acquisition may involve the entry into geographic or business markets in which the Company has little or no prior experience or where competitors have stronger market positions; ● if the Company incurs debt to fund such acquisition, such debt may subject us to material restrictions on our ability to conduct our business as well as financial maintenance covenants; and ● to the extent that the Company issues a significant amount of equity securities in connection with future acquisitions, existing stockholders may be diluted and earnings per share may decrease. The occurrence of any of these risks could have a material adverse effect on the Company' s business, results of operations, financial condition and cash flows. ~~10Risk~~ -- **Risk** Related to our BusinessThe type of contracts we obtain could adversely affect our profitability. We enter into various types of contracts, including fixed price and variable pricing contracts. On fixed price contracts our profits could be curtailed or eliminated by unanticipated pricing increases associated with the contract. A portion of our business depends on our ability to provide surety bonds. We may be unable to compete on certain projects if we are not able to obtain the necessary surety bonds. Current or future market conditions, including losses in the construction industry or as a result of large corporate bankruptcies, as well as changes in our surety providers' assessment of our operating and financial risk, could cause our surety providers to decline to issue or renew, or substantially reduce the amount of bonds for our work or could increase our bonding costs. These actions could be taken on short notice. Since a growing number of our customers require such bonding, should our surety providers limit or eliminate our access to bonding, our performance could be negatively impacted if we are unable to replace the bonded business with work that does not require bonding or if we are unable to provide other means of securing the jobs performance such as with letters of credit or cash. Many of our contracts can be cancelled or delayed or may not be renewed upon completion. If our customers ~~should~~ cancel or delay many projects, our revenues could be reduced if we are unable to replace these contracts with others. Also, we have contracts that expire and are renewed periodically. If we are unsuccessful in renewing those contracts, that could reduce our revenue as well. Our business requires a skilled labor force and if we are unable to attract and retain qualified employees, our ability to maintain our productivity could be impaired. Our productivity depends upon our ability to employ and maintain skilled personnel to meet our requirements. Should some of our key managers leave the Company, it could limit our productivity. Also, many of our labor personnel are trade union members. Should we encounter labor problems associated with our union employees or if we are unable to employ enough available operators, welders, or other skilled labor, our production could be significantly curtailed. Our backlog may not be realized. Our backlog could be reduced due to **the** cancellation of projects by customers and / or reductions in scope of the projects. Should this occur, our anticipated revenues would be reduced unless we are able to replace those contracts. ~~We~~ **10We** extend credit to customers for purchases of our services and therefore have risk that they may not be able to repay us. While we have not had any significant problems with collections of accounts receivables historically, should there be an economic downturn our customers' ability to repay us could be compromised, and this may curtail our operations and ability to operate profitably. Our dependence on suppliers, subcontractors and equipment manufacturers could expose us to risk of loss in our operations. On certain projects, we rely on suppliers to obtain the necessary materials and subcontractors to perform portions of our services. We also rely on equipment manufacturers to provide us with the equipment needed to conduct our operations. Any limitation on the availability of materials or equipment or failure to complete work on a timely basis by subcontractors in a quality fashion could lead to added costs and therefore lower profitability for the Company. ~~11We~~ **We** face cybersecurity risk including ~~the~~ breach of confidential personal information, Company or customer intellectual properties, and delays related to data loss. Information technology systems are critical to our business. We use various technology systems to manage our customer relationships, general ledger **,** and other systems. Our computer systems, data management and internal processes, as well as those of third parties, are integral to our performance. Our operational risks include the risk of malfeasance by employees or persons outside our company, errors relating to transaction processing and technology, systems failures or interruptions, breaches of our internal control systems, and business continuation and disaster recovery. There have been increasing efforts by third parties to breach data security. Such attacks include computer viruses, malicious or destructive code, phishing attacks, denial of service or information or other security breaches that could result in the unauthorized release, gathering, monitoring, misuse, loss or destruction of confidential, proprietary **,** and other information, damages to systems, or other material disruptions to network access or business operations. The Company uses industry- leading firewall hardware and runs anti- malware, antivirus, and anti- exploit solutions on all computers as a first line of defense to prevent security breaches. The Company' s email software utilizes spam blocking, phishing filtering, and external sender warnings. The Company uses compartmentalized network drive access to mitigate ransomware damage and performs daily encrypted backups to secure offsite locations including a disaster recovery site. Although we take protective measures and believe that we have not experienced any of the data breaches described above, the security of our computer systems, software, and networks may be vulnerable to breaches, unauthorized access, misuse, computer viruses, or other malicious code and cyber- attacks that could have an impact on information security. Because the techniques used to cause security breaches change frequently, we may be unable to proactively address these techniques or to implement adequate preventative measures. Inflation can have an adverse impact on our business and on our customers. Inflation risk is the risk that the value of assets or income will be worth less in the future as inflation decreases the value of money. Recently, there have been market indicators of a pronounced rise in inflation and the Federal Reserve has raised certain benchmark interest rates ~~in an effort~~ to combat inflation. Inflation generally increases the cost of goods and services we will use in our business operations, such as electricity and other utilities, which increases our expenses. In addition, we may have to increase both wages to retain our employees and the cost of our services by a greater amount than we have budgeted. Furthermore, our customers will also be affected by inflation and the rising costs of goods and services used in their businesses, which could have a negative impact on their ability to use our services and afford to pay our fees. ~~Societal~~ **11Societal** responses to climate change could adversely affect our business and performance, including indirectly through impacts on our customers. Concerns over the long- term impacts of climate change have led and will continue to lead to governmental efforts around the world to mitigate those impacts. Consumers and businesses also may change their behavior on their own as a result of these concerns. We and our customers will need to respond to new laws and regulations as well as consumer and business preferences resulting from climate change concerns. We and our customers may face cost increases, asset value reductions and operating process changes. The impact on our customers will likely vary depending on their specific attributes, including reliance on or role in carbon intensive activities. Among the impacts ~~to~~ **on** us could be a drop in demand for our products and services, particularly in certain sectors. Our efforts to take these risks into account may not be effective in protecting us from the negative impact of new laws and regulations or changes in consumer or business behavior. ~~Risk Related to the COVID- 19 PandemicWe have operations in multiple states and face risks related to the Coronavirus / COVID 19 global pandemic that could impact our results of operations. Our business could be adversely affected by the effects of the widespread outbreak of Coronavirus and related variants (“ COVID- 19 ”).~~ The outbreak of COVID- 19 and other...... could impact our operating results. 12The SBA may review the Company’ s PPP Loan forgiveness application and if the SBA disagrees with the Company’ s certification the Company could be subject to penalties and the repayment of the PPP Loans, which could negatively impact the Company’ s business, financial condition and results of operations and prospects. **Due to the economic uncertainties created by COVID- 19 and limited operating funds available, the Company applied for loans under the PPP. On April 15, 2020, the Company and its subsidiaries, C. J. Hughes, Contractors Rental and Nitro, entered into separate PPP notes effective April 7, 2020, with the Lender in an aggregate principal amount of $ 13. 1 million pursuant to the PPP Loans.** In **a special meeting held on April 27, 2020, the Board of Directors of the Company unanimously voted to return $ 3. 3 million of the PPP Loans after discussing the financing needs of the Company and subsidiaries. That left the Company and subsidiaries with $ 9. 8 million in PPP Loans to fund operations. During** fiscal year 2021, the Company received ~~notification of~~ **notice that the SBA had granted** forgiveness ~~on~~ **of** the $ 9. 8 million ~~in~~ **of** PPP ~~loans~~ **Loans and the SBA repaid the Lender in full. The forgiveness was recorded as other income for the fiscal year ended September 30, 2021. During April 2023, management** received ~~in calendar year 2020~~ **notification from the SBA that one of the Company’ s forgiveness applications related to the PPP Loans was under review. As part of the review, the SBA requested additional payroll information. Additionally, the SBA requested information regarding the ability of the Company’ s affiliates to meet SBA size standards and / or PPP corporate maximum limits** . The **requested information was subsequently provided to the SBA through the Lender. The** Company **recognizes that there is a possibility that the SBA could reverse its previous determination on the forgiveness of the PPP Loans. As a result of this uncertainty, the Company restated the previously audited financial statements of the Company for the fiscal years ended September 30, 2022 and 2021. During July 2023, management received notification from the SBA that two additional forgiveness applications related to the PPP Loans were under review. As part of the review, the SBA requested information regarding the ability of the Company’ s affiliates to meet SBA size standards and / or PPP corporate maximum limits. The requested information was subsequently provided to the SBA through the Lender. Borrowers** must retain PPP ~~loan~~ documentation ~~in its files~~ for **at least** six years after the date ~~of~~ **the loan is** ~~forgiveness~~ --- **forgiven** ~~. The Company believes it meets~~ **or paid in full, and** the SBA ~~’ s certification requirement based on its limited access to capital, weakened business operations during the pandemic~~ and ~~small market value. The Company’ s shares of common stock did not trade on a national exchange at the time we applied for PPP loans and at the time such loans were forgiven by the~~ SBA **Inspector General must be granted** ~~. The Company has not received any notifications related to an audit; however, the~~ **these files upon** ~~Company has provided additional payroll costs information for two companies as requested by the SBA through the Company’ s lender. The Company has received no other requests~~ - **request** ~~or questions. However, no assurance can be given as to the outcome if the SBA re- evaluates the Company’ s loan certification~~ . The SBA could **revisit its forgiveness decision and** determine that the Company does not qualify in whole or in part for loan forgiveness **and demand repayment of the loans** . In addition, it is unknown what type of penalties could be assessed against the Company if the SBA disagrees with the Company’ s certification ~~. The Company could be required to repay its PPP Loans~~ . Any penalties in addition to the potential repayment of the PPP Loans could negatively impact the Company’ s business, financial condition and results of operations and prospects. Risk Related to our IndustryAn economic downturn in the industries we serve could lead to less demand for our services. In addition to the effects of an economic recession, there could be reductions in the industries that the Company serves. If the demand for natural gas should drop dramatically, or the demand for electrical and mechanical services drops dramatically, these would in turn result in less demand for the Company’ s services. ~~Project~~ **12Project** delays or cancellations may result in additional costs to us, reductions in revenues or the payment of liquidated damages. In certain circumstances, we guarantee project completion by a scheduled acceptance date or are paid only upon achievement of certain acceptance and performance testing levels. Failure to meet any of these requirements could result in additional costs or penalties which could exceed the expected project profits. Our industry is highly competitive. Our industry has been and remains competitive with competitors ranging from small owner operated companies to large public companies. Within that group there may be companies with lower overhead costs that may be able to price their services at lower levels than we can. Accordingly, if that occurs, our business opportunities could be severely limited. In addition, our industry competes for energy demand with suppliers of alternative energy sources such as solar and wind. We may be unsuccessful at generating internal growth. Our ability to generate internal growth will be affected by our ability to: ● Attract new customers; ● Expand our relationships with existing customers; ● Hire and maintain qualified employees; ● Expand geographically; and ● Adjust quickly to changes in our industry. ~~13Risk~~ -- **Risk** Related to FinancingCredit facilities to fund our operations and growth might not be available. Our business relies heavily on having lines of credit in place to fund the various projects we are working on. Should funding not be available, or on favorable terms, it could severely curtail our operations and the ability to generate profits. Energy Services maintains a banking relationship with two regional banks and has lines of credit and borrowing facilities with these institutions. On ~~July 13~~ **January 19** , ~~2022~~ **2023** , the Company ~~renewed~~ **agreed to an amendment to a loan agreement which increased** its **line of credit to** $ ~~15~~ **30** . 0 million ~~operating~~ **with a maturity date of June 28, 2023. On June 1, 2023, the agreement was renewed through June 28, 2024. The** line of credit **is limited to a** ~~with United Bank. Based on the~~ borrowing base calculation, **which was approximately** ~~the Company could borrow up to~~ $ ~~12~~ **23** . ~~5~~ **9** million **at** ~~as of~~ September 30, ~~2022~~ **2023** . The ~~Company had borrowed~~ **outstanding balance on the line of credit was** $ ~~12~~ **8** . ~~5~~ **7** million **at** ~~on the line of credit as of~~ September 30, ~~2022~~ **2023 . The** ~~, leaving no borrowings available on the~~ line of credit ~~as~~ **has** ~~of that~~ **a variable interest** ~~date~~ **rate equal to the “ Wall Street Journal ” Prime Rate with a floor of 4. 5 %, which was 8. 5 % at September 30, 2023** . The Company believes this line of credit will provide enough operating capital for future projects ~~, but the Company and its lenders are working on a financing package that could expand the current operating line~~ . The Company cannot guarantee it will always have access to this line of credit in the future depending on the Company' s financial performance. Risk Related to our Financial PerformanceRevenue and cost estimates on projects may differ from actual results. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of revenues and expenses during the reporting period. We evaluate our estimates on an ongoing basis, based on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. While the Company believes estimates on project performance are materially correct at September 30, ~~2022~~ **2023** , there can be no assurance that actual results will not differ from those estimates. ~~Risk~~ **13Risk** Related to Law and Regulatory ComplianceDuring the ordinary course of business, we may become subject to lawsuits or indemnity claims, which could materially and adversely affect our business and results of operations. From time to time, we may in the ordinary course of business be named as a defendant in lawsuits, claims and other legal proceedings. These actions may seek, among other things, compensation for alleged personal injury, worker' s compensation, employment discrimination, breach of contract, property damages, civil penalties **,** and other losses of injunctive or declaratory relief. Also, we often indemnify our customers for claims related to the services we provide and actions we take under our contracts with them. Because our services in certain instances may be integral to the operation and performance of our customers' infrastructure, we may become subject to lawsuits or claims for any failure of the systems we work on. While we carry insurance to protect the Company against such claims, the outcomes of any of the lawsuits, claims or legal proceedings could result in significant costs and diversion of management' s attention from the business. Payments of significant amounts, even if reserved, could adversely affect our reputation, liquidity and results of operations. We may incur liabilities or suffer negative financial or reputational harm relating to occupational health and safety matters. Our operations are subject to extensive laws and regulations relating to the maintenance of safe conditions in the workplace. While we are constantly monitoring our health and safety programs, our industry involves a high degree of operating risk and there can be no assurance given that we will avoid significant liability exposure and / or be precluded from working for various customers due to high incident rates. Changes by the government in laws regulating the industries we serve could reduce our sales volumes. If the government enacts legislation that has a serious impact on the industries we serve, it could lead to the curtailment of capital projects in those industries and therefore lead to lower sales volumes for our Company. **outbreak of** ~~global pandemic such as~~ COVID- 19 and other adverse public health developments **may** ~~that could~~ have a material and adverse effect on our business operations.These could include disruptions or restrictions on our ability to travel or to complete our projects,as well as temporary closures of our facilities or the facilities of our suppliers or customers.Any disruption of our suppliers or customers would likely impact our operating results.In addition,the continued outbreak of COVID- 19 could continue to adversely affect the economies of the states that we operate in resulting in a long- term economic downturn that could impact our operating **results.12The** 14