

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

----- X  
In re: : Chapter 11  
: :  
HI-CRUSH INC., *et al.*,<sup>1</sup> : Case No. 20-33495 (DRJ)  
: :  
Debtors. : (Jointly Administered)  
: :  
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**DEBTORS' EMERGENCY MOTION FOR ENTRY OF  
ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE  
THEIR CUSTOMER PROGRAMS AND (II) GRANTING RELATED RELIEF**

**EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 13, 2020 AT 3:30 P.M. PREVAILING CENTRAL TIME IN COURTROOM 400, 4TH FLOOR, 515 RUSK STREET, HOUSTON, TX 77002. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

**RELIEF IS REQUESTED NOT LATER THAN JULY 13, 2020.**

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.



Please note that on March 24, 2020, through the entry of General Order 2020-10, the Court invoked the Protocol for Emergency Public Health or Safety Conditions.

It is anticipated that all persons will appear telephonically and also may appear via video at this hearing.

Audio communication will be by use of the Court's regular dial-in number. The dial-in number is +1 (832) 917-1510. You will be responsible for your own long-distance charges. You will be asked to key in the conference room number. Judge Jones' conference room number is 205691.

Parties may participate in electronic hearings by use of an internet connection. The internet site is [www.join.me](http://www.join.me). Persons connecting by mobile device will need to download the free [join.me](http://www.join.me) application.

Once connected to [www.join.me](http://www.join.me), a participant must select "join a meeting". The code for joining this hearing before Judge Jones is "judgejones". The next screen will have a place for the participant's name in the lower left corner. Please complete the name and click "Notify".

Hearing appearances should be made electronically and in advance of the hearing. You may make your electronic appearance by:

- 1) Going to the Southern District of Texas website;
- 2) Selecting "Bankruptcy Court" from the top menu;
- 3) Selecting "Judges' Procedures & Schedules;"
- 4) Selecting "view home page" for Judge David R. Jones;
- 5) Under "Electronic Appearance," select "Click here to submit Electronic Appearance;"
- 6) Select "Hi-Crush Inc., et al." from the list of Electronic Appearance Links; and
- 7) After selecting "Hi-Crush Inc., et al." from the list, complete the required fields and hit the "Submit" button at the bottom of the page.

Submitting your appearance electronically in advance of the hearing will negate the need to make an appearance on the record at the hearing.

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") respectfully state the following in support of this emergency motion (the "**Motion**"):

### **RELIEF REQUESTED**

1. By this Motion, the Debtors request entry of an order (the "**Order**"), substantially in the form attached hereto, authorizing the Debtors, in their discretion, to continue, enforce, renew, replace, implement new and/or terminate their Customer Programs (as defined below) and any other customer practices as the Debtors deem appropriate, without further application to the

Court. For the avoidance of doubt, nothing herein shall impair the Debtors' rights to dispute the validity of any obligation that arises from a Customer Program.

### **JURISDICTION AND VENUE**

2. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b), and this Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 363(b) and 363(c) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), to the extent applicable, Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**"), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "**Complex Case Procedures**").

### **BACKGROUND**

4. On the date hereof (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of J. Philip McCormick, Jr., Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day**

**Declaration**”),<sup>2</sup> which is filed with the Court concurrently herewith and is fully incorporated herein by reference.

5. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

6. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

### **BASIS FOR RELIEF**

7. Before the Petition Date and in the ordinary course of their businesses, the Debtors entered into certain supply contracts and established various programs with certain customers, including the Prepayment Program (as defined below), the Volume Discount Program (as defined below), Minimum Purchase Agreements (as defined below), and Credits (as defined below) (together, the “**Customer Programs**”), each of which is described in more detail below. The Debtors seek authority, in their discretion, to continue the Customer Programs or implement new customer practices in the ordinary course of the Debtors’ businesses as the Debtors deem necessary. As further described below, the Debtors do not have any unpaid prepetition monetary obligations with respect to their Customer Programs.

8. The Debtors mine, process and distribute high-quality silica sand—a key input for the hydraulic fracturing of oil and natural gas wells. The Debtors supply silica sand and provide related equipment and services directly to their customers. The Debtors’ goodwill and ongoing

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

business relationships may erode if their customers perceive that the Debtors are unable or unwilling to fulfill the prepetition commitments they have made through the Customer Programs. If the Debtors are unable to preserve the loyalty of their customers, the Debtors' businesses would likely suffer material harm. It is essential that the Debtors retain their current customers throughout the Chapter 11 Cases. Continuing the Customer Programs will help to accomplish this goal by ensuring customer satisfaction and generating repeat business, which ultimately increases net revenue.

9. While the Debtors do not believe that Court approval is required to continue the Customer Programs, by this Motion the Debtors request authority to continue, enforce, renew, replace, modify, implement new and/or terminate the Customer Programs, in their business judgment.

10. The following are general descriptions and examples of the Customer Programs.

**A. Prepayment Program**

11. The Debtors have certain customers who have entered into agreements to prepay for silica sand or equipment in return for committed access to sand supply and discounted pricing (the "**Prepayment Program**"). The Prepayment Program accelerates the receipt of payment, improves the Debtors' cash flow and working capital positions and frees up resources for the Debtors to utilize in other parts of their businesses. The Prepayment Program also reduces counterparty payment risk and helps the Debtors build strong business relationships with customers, which in turn increases the volume of the Debtors' sales. Without the Prepayment Program, the Debtors risk losing business and customers to competitors. According to the Debtors' most recent public financials as of March 31, 2020, total liability for the future deliveries of frac sand and silo equipment under the Prepayment Program is recorded at approximately \$18 million and the Debtors expect to recognize these deliveries over the next two and a half years,

subject to customary and contractual adjustments in the ordinary course. Failure to deliver the sand and/or equipment and services or maintain access to sand supply for the customers in accordance with the terms of the prepayment agreements could have a material detrimental effect on the Debtors' relationship with key customers. The remaining terms on the current agreements under the Prepayment Program range from approximately one to three years.

**B. Volume Discount Program**

12. The Debtors have pre-negotiated contractual agreements with select customers whereby they provide such customers with discounts on silica sand and related equipment and services from current market spot rates based on the volume purchased (the “**Volume Discount Program**”). The Volume Discount Program incentivizes customers to purchase additional goods from the Debtors, engenders customer loyalty, and allows the Debtors to develop and maintain a broad customer base. The Volume Discount Program is structured in a variety of ways, including sliding scales that result in greater discounts as purchase volume increases or discounts applied once a certain purchase volume threshold is met.

**C. Minimum Purchase Agreements**

13. In the ordinary course of business, the Debtors enter into minimum purchase agreements with certain customers that require the customer to either order a minimum amount of product over a set time period from the Debtors or otherwise pay for the shortfall (the “**Minimum Purchase Agreements**”). The Minimum Purchase Agreements are often offered in exchange for a discount or, in some instances, are offered to new customers that do not have a history of doing business with the Debtors. This program allows the Debtors to properly allocate resources and efficiently plan and manage their supply chains. As with the Prepayment Program and the Volume Discount Program, the Minimum Purchase Agreements provide an additional mechanism to reward loyal customers, promote brand loyalty, and strengthen the Debtors' businesses.

**D. Credits**

14. In the ordinary course of business, the Debtors provide credits to certain of their customers, frequently in the form of discounts off of future invoices or as otherwise negotiated (the “**Credits**”). The Debtors offer the Credits either as a vehicle to enhance the Debtors’ customer service to existing key customers or as an incentive to new customers. As of the Petition Date, the Debtors anticipate that approximately \$200,000 of Credits may be owed to customers as part of this practice. By this Motion, the Debtors seek authority to honor existing Credits and grant new Credits in the ordinary course of business at their sole discretion.

**APPLICABLE AUTHORITY**

**A. Section 363 of the Bankruptcy Code Supports the Continuation of the Customer Programs**

15. To the extent that the continuation of the Customer Programs would be deemed to constitute a use of property outside the ordinary course of business, a basis for authorizing such continuation is found under section 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor’s request to use of property of the estate outside of the ordinary course of business where the debtor in possession has articulated a good business reason for such use. *See, e.g., Institutional Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (holding that section 363(b) of the Bankruptcy Code requires that “there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business”); *In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the

movant must articulate some business justification for the sale . . . .”); *In re Terrace Gardens Park P’ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989) (applying Continental to require “articulated business justification” for section 363 transaction).

16. Where a debtor has articulated a valid business justification for a proposed transaction, courts generally apply the business judgment rule in evaluating such transaction. *See, e.g., ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.”). Courts emphasize that the business judgment rule is not an onerous standard. “Great judicial deference is given to the [debtor’s] exercise of business judgment.” *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp., Ltd.)*, 331 B.R. 251, 254 (N.D. Tex. 2005). As long as a transaction “appears to enhance a debtor’s estate, court approval of a debtor-in-possession’s decision to [enter into the transaction] should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the Bankruptcy Code.” *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (citation and internal quotation marks omitted).

17. Finally, section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to Section 1108 of the Bankruptcy Code to “enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). Section 363 of the Bankruptcy Code is designed to allow a debtor “to continue its daily operations without excessive court or creditor oversight and protect[] secured creditors and others from dissipation of the estate’s assets.” *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 599



(M.D. Tenn. 1990) (citations omitted); *see also Phelps v. U.S. Bank Nat. Ass'n.*, Case No. 2:13-CV-361, 2014 WL 991803, at \*3 (S.D. Tex. Mar. 13, 2014) (citing section 363 of the Bankruptcy Code and holding that “[a]n assignment that is made in the ordinary course of business does not require the pre-approval of the Bankruptcy Court of the lifting of the automatic stay”); *In re Cook & Sons Mining, Inc.*, No. Civ.A. 05-19, 2005 WL 2386238, at \*3 (E.D. Ky. Sept. 28, 2005) (“Code § 363 is designed to allow a Chapter 11 debtor the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary.”) (quoting *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992)). Moreover, the “‘ordinary course of business’ standard is intended to allow a debtor the flexibility it needs to run its business and respond quickly to changes in the business climate.” *Harrison*, 115 B.R. at 598 (quoting *In re Johns-Manville Corp.*, 60 B.R. 612, 617 (Bankr. S.D.N.Y. 1986)).

18. The Bankruptcy Code does not define “ordinary course of business.” However, “through a synthesis of case law, courts have developed a workable analytical framework for determining whether an activity is within the debtor’s ‘ordinary course of business.’” *In re Husting Land & Dev., Inc.*, 255 B.R. 772, 778 (Bankr. D. Utah 2000), *aff’d*, 274 B.R. 906 (D. Utah 2002). “Typically courts examine the ‘horizontal’ and ‘vertical’ dimensions of a debtor’s business to address these policies reflected in the Code and to determine whether a transaction is outside the ordinary course of business.” *In re Cook & Sons Mining, Inc.*, 2005 WL 2386238, at \*4 (quoting *In re Crystal Apparel, Inc.*, 220 B.R. 816, 831 (Bankr. S.D.N.Y. 1998)).

19. The horizontal test is “an objective test asking whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry.” *In re Cook & Sons Mining, Inc.*, 2005 WL 2386238, at \*4 (quoting *In re Roth Am., Inc.*, 975 F.2d at

953); *see also Peltz v. Gulfcoast Workstation Grp. (In re Bridge Info. Sys., Inc.)*, 293 B.R. 479, 486 (Bankr. E.D. Mo. 2003) (a transaction qualifies as “ordinary course” if it “is of the type that is commonly undertaken within the debtor’s industry.”).

20. The vertical dimension examines “the reasonable expectations of interested parties as to this particular debtor-in-possession.” *In re Cook & Sons Mining, Inc.*, 2005 WL 2386238, at \*4 (“Thus, the issue is whether the transaction ‘is the type of transaction which creditors would expect to have advance notice of and have a chance to object to.’”) (quoting *In re Waterfront Cos., Inc. v. Johnston*, 56 B.R. 31, 35 (Bankr. D. Minn. 1985)); *see also In re James A. Phillips, Inc.*, 29 B.R. 391, 394 (Bankr. S.D.N.Y. 1983) (“The touchstone of ‘ordinariness’ is [] the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business. So long as the transactions conducted are consistent with these expectations, creditors have no right to notice and hearing, because their objections to such transactions are likely to relate to the bankrupt’s chapter 11 status, not the particular transactions themselves.”).

21. An important characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. *Marshack v. Orange Comm. Credit (In re Nat’l Lumber & Supply, Inc.)*, 184 B.R. 74, 79 (B.A.P. 9th Cir. 1995) (to qualify as ordinary course, payment must be consistent with the past practices and industry standards), (*abrogated on other grounds by Office of the U.S. Tr. v. Hayes (In re Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.)*, 104 F.3d 1147, 1148 (9th Cir. 1997)). Relevant factors in determining whether a transaction is ordinary include the type of business a debtor is engaged in as well as the size and nature of the business and transaction in question. *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. at 598. While the Debtors do not believe that Court approval is required to continue honoring and

maintaining the Customer Programs in the ordinary course of business, out of an abundance of caution, the Debtors request entry of the Order authorizing them to continue to honor and maintain such programs postpetition.

22. The Debtors submit that the requested relief represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm, and is justified under sections 363(b) and 363(c) of the Bankruptcy Code. If the Debtors are prohibited from honoring and maintaining their Customer Programs consistent with their past business practices, customers will likely lose confidence in the Debtors' ability provide goods and services on competitive terms. In addition, the damage from refusing to honor these commitments far exceeds the costs associated with honoring prepetition commitments and continuing these practices. The relief requested herein will protect the Debtors' goodwill during this critical time and enhance the Debtors' ability to generate revenue. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

23. Accordingly, the Debtors request that they be authorized, in their discretion, to continue, renew, replace, enforce, implement new and/or terminate the Customer Programs and any other customer practices as they deem appropriate, without further application to the Court. Any delay in the relief sought—indeed, even being forced to advise customers that further judicial relief is necessary—could result in the Debtors losing a portion of their customer base and severe harm to their estates. Accordingly, the requested relief is necessary to avoid immediate and irreparable harm to the Debtors and to their estates, which would far outweigh the cost of the Customer Programs.

**B. Section 105 of the Bankruptcy Code and the “Doctrine of Necessity” Support the Continuation of the Customer Programs**

24. In addition, the Debtors submit that the Court may grant the relief requested herein under the “doctrine of necessity” and to the extent applicable, section 105(a) of the Bankruptcy Code. *In re Scotia Dev., LLC*, No. 07-20027, 2007 WL 2788840, at \*1 (Bankr. S.D. Tex. Sept. 21, 2007) (acknowledging the existence of the doctrine of necessity). For the reasons set forth above, and in light of the need for the Debtors to preserve the going concern value of their businesses, the relief requested herein is proper and should be granted.

25. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C § 105(a). Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to “protect and preserve the estate, including operation business’ going-concern value,” on behalf of the debtors’ creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management was burdened with the duties and responsibilities of a bankruptcy trustee.”).

**EMERGENCY CONSIDERATION**

26. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” The Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their

operations and the success of the Chapter 11 Cases. As discussed in detail above and in the First Day Declaration, immediate and irreparable harm would result if the relief requested herein is not granted. Any delay in granting the requested relief could irreversibly damage customer relations, harming business operations in both the near and long-term. Moreover, by not authorizing the Debtors' to honor their Customer Programs, the Debtors' run the risk of losing those customers and signaling to the market that the Debtors may not be able to meet their obligations. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 as well as the requirements of Bankruptcy Local Rule 9013-1(i) and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

#### **BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

27. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

#### **RESERVATION OF RIGHTS**

28. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to

pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Order once entered. Nothing contained in the Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

### NOTICE

29. Notice of this Motion will be given to: (i) the United States Trustee for the Southern District of Texas; (ii) the parties included on the Debtors' consolidated list of the holders of the 30 largest unsecured claims against the Debtors; (iii) Simpson, Thacher & Bartlett LLP as counsel to the agent for the Debtors' prepetition and postpetition secured asset-based revolving credit facility; (iv) U.S. Bank National Association, as indenture trustee for the Debtors' prepetition notes; (v) counsel to that certain ad hoc group of holders of prepetition senior notes (the "**Ad Hoc Group**") (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP and (b) Porter Hedges LLP; (vi) Shipman & Goodwin LLP as counsel to the agent under the Debtors' postpetition term loan facility; (vii) the United States Attorney's Office for the Southern District of Texas; (viii) the Internal Revenue Service; (ix) the Securities and Exchange Commission; (x) the state attorneys general for states in which the Debtors conduct business; and (xi) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

30. A copy of this Motion is available on (i) the Court's website: [www.txs.uscourts.gov](http://www.txs.uscourts.gov), and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at [www.kccllc.net/hicrush](http://www.kccllc.net/hicrush).

**WHEREFORE**, the Debtors respectfully request that the Court enter the proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Signed: July 12, 2020  
Houston, Texas

Respectfully Submitted,

/s/ Timothy A. ("Tad") Davidson II  
Timothy A. ("Tad") Davidson II (TX Bar No. 24012503)  
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-and-

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*Proposed Counsel for the Debtors and Debtors in Possession*

**CERTIFICATE OF SERVICE**

I certify that on July 12, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

|   |   |                         |
|---|---|-------------------------|
|   | X |                         |
| In re:                                      | : | Chapter 11              |
|   | : |                         |
| HI-CRUSH INC., <i>et al.</i> , <sup>1</sup> | : | Case No. 20-33495 (DRJ) |
|   | : |                         |
| Debtors.                                    | : | (Jointly Administered)  |
|   | : |                         |
|   | X |                         |

**ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE  
THEIR CUSTOMER PROGRAMS AND (II) GRANTING RELATED RELIEF**

[Relates to Motion at Docket No. \_\_\_\_ ]

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an Order (i) authorizing the Debtors to continue their Customer Programs and (ii) granting related relief; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and all objections, if any, to entry of this Order having

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

been withdrawn, resolved, or overruled; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Order, it is hereby

**ORDERED THAT:**

1. The Debtors are authorized, but not directed, to continue, enforce, renew, replace, modify, implement new and/or terminate existing Customer Programs and any other customer practices as they deem appropriate, in consultation with counsel to the Ad Hoc Group, without further application to the Court, including making all payments, honoring all discounts and credits, satisfying all obligations, and permitting and effecting all setoffs in connection therewith, in each case whether related to the prepetition period or the postpetition period.

2. The Debtors are authorized to enforce any Minimum Purchase Agreements in the ordinary course of business.

3. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Order. Nothing contained in this Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

4. Nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of or basis for any claims asserted against the Debtors in connection with any Customer Programs.

5. Notwithstanding anything to the contrary contained herein, (i) any payment made, or to be made, or authorization contained hereunder shall be subject to the requirements imposed on the Debtors under any order approving a postpetition financing facility or any order regarding the use of cash collateral approved by this Court in these Chapter 11 Cases (collectively, the “**DIP Orders**”), and (ii) to the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. For the avoidance of doubt, the Debtors are not authorized to make any payments pursuant to this Order except as permitted by the Budget (as defined in the DIP Orders).

6. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b) and 6004(a).

7. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

8. The Debtors shall maintain a matrix/schedule of payments related to the Customer Programs made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; (c) the category or type of payment; and (d) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, the Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases 30 days beginning upon entry of this Order.

9. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

10. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed \_\_\_\_\_, 2020

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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE