

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

IN RE:	§	CHAPTER 11
	§	
HI-CRUSH INC., ET. AL.	§	
	§	CASE NO. 20-33495
	§	JOINTLY ADMINISTERED
DEBTORS	§	

**CYPRESS-FAIRBANKS ISD, ECTOR CAD AND HARRIS COUNTY’S OBJECTION
TO THE JOINT PLAN OF REORGANIZATION FOR HI-CRUSH INC. AND ITS
AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

TO THE COURT:

Now comes Cypress-Fairbanks, Ector CAD and Harris County (“Texas Tax Authorities”) and files their Objection to the Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors under Chapter 11 of the Bankruptcy Code (“Plan”) (ECF #289) and respectfully represents the following:

1. The Texas Tax Authorities are units of local government in the State of Texas which possess the authority under the laws of the State to assess and collect *ad valorem* taxes on real and personal property.
2. The Texas Tax Authorities filed their pre-petition secured proof of claims herein for *ad valorem* property taxes assessed against the Debtors’ property for estimated year 2020 and prior as follows:
 - a. In Hi-Crush, Inc.; Case No. 20-33495, Harris County filed its pre-petition secured proof of claim for estimated 2020 in the amount of \$961.89.
 - b. In Bulktracer Holdings, LLC; Case No. 20-33511, Harris County filed its pre-petition secured proof of claim for year 2016 in the amount of \$165.46.



- c. In FB Industries USA, Inc.; Case No. 20-33513, Ector CAD filed its pre-petition secured proof of claim for estimated 2020 in the amount of \$8,000.65.
 - d. In Hi-Crush, LMS, LLC; Case No. 20-33503, Ector CAD filed its pre-petition secured proof of claim for estimated 2020 in the amount of \$2,210.91.
 - e. In D & I Silica, LLC; Case No. 20-33501, Ector CAD filed its pre-petition secured proof of claim for estimated 2020 in the amount of \$22,109.16.
3. The Texas Tax Authorities claims are for business personal property taxes incurred by the Debtor in the ordinary course of business. These taxes are secured by first priority liens pursuant to Texas Property Tax Code §§32.01 and 32.05. In pertinent part, §32.01 provides
- (a) **On January 1 of each year, a tax lien attaches** to property to secure the payment of all taxes, penalties and interest ultimately imposed for the year
 - (b) A tax lien on inventory, furniture, equipment, or their personal property is a lien in solido and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.
 - (c) The lien under this section is perfected on attachment and . . . **perfection requires no further action** by the taxing unit.
4. The tax lien takes priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. See Texas Property Tax Code §32.05 (b); See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. 1995) (bank’s foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit’s statutory tax lien). The tax lien arises on January 1 of each tax year and “floats” to after acquired property. See City of Dallas v. Cornerstone Bank, 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The tax lien is a lien *in solido* and is a lien of all personal property of the Debtor. See In re Universal Seismic, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. See

In re: Winns, 177 B.R. 253 (Bankr. W.D. Tex. 1995).

5. The Texas Tax Authorities object to the Plan in that the payment terms relating to the Texas Tax Authorities tax claims for ad valorem tax debt are vague and unclear and provide the Texas Tax Authorities with no certain payment terms. The Texas Tax Authorities assert that their ad valorem tax claims should be paid in the ordinary course prior to delinquency on or before January 31, 2021.
6. The Texas Tax Authorities object to the Plan to the extent it fails to retain the Texas Tax Authorities' tax lien for pre-petition and post-petition taxes until such tax debt is paid in full. Lien retention is required for confirmation pursuant to 11 U.S.C. § 1129 (b)(2)(A)(i)(I).
7. The Texas Tax Authorities object to the Debtor's Exit Financing to the extent it purports to prime or subordinate the superior lien position of the Texas Tax Authorities. The Texas Tax Authorities retain their senior secured lien status for the unpaid balance of its tax claim.

WHEREFORE, PREMISES CONSIDERED, the Texas Tax Authorities pray that this Court deny the Debtor's Plan and grant them all relief as may be just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection of Texas Tax Authorities to the Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors under Chapter 11 of the Bankruptcy Code was served this the 17th day of September, 2020 by Electronic Filing and/or by First Class Mail upon the following:

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