

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

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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 APPLICATION FOR  
ENTRY OF AN ORDER AUTHORIZING EMPLOYMENT AND  
RETENTION OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS,  
NOTICING, AND SOLICITATION AGENT EFFECTIVE AS OF PETITION DATE**

**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:

Going to the Southern District of Texas website;

Selecting "Bankruptcy Court" from the top menu;

Selecting "Judges' Procedures & Schedules";

Selecting "view home page" for Judge David R. Jones;

Under "Electronic Appearance," select "Click here to submit Electronic Appearance";

Select "Hi-Crush Inc., et al." from the list of Electronic Appearance Links; and

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 application (this "**Application**"):

### **RELIEF REQUESTED**

1. By this Application, the Debtors request entry of an order (the "**Retention Order**"), substantially in the form attached hereto, under section 156(c) of title 28 of the United States Code, sections 105(a), 327, 503, and 1107 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**"), Rules 2002(f), 2014(a), 2016, 6003(a) and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2014-1 and 9013-1 of the

Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”) appointing Kurtzman Carson Consultants LLC (“**KCC**”) as claims, noticing, and solicitation agent (“**Claims and Noticing Agent**”) in the above-captioned cases effective as of the Petition Date (as defined below). In support of this Application, the Debtors rely upon and incorporate by reference the *Declaration of J. Philip McCormick, Jr., Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”)<sup>2</sup>, and the *Declaration of Robert Jordan in Support of Debtors’ Application for Order Appointing Kurtzman Carson Consultants LLC as Claims, Noticing, and Solicitation Agent Effective as of the Petition Date* (the “**Jordan Declaration**”), attached hereto as Exhibit A. In further support of this Application, the Debtors respectfully represent as follows:

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Application under 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges* from the United States District Court for the Southern District of Texas dated as of May 24, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Application in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 327, 503, and 1107 of the Bankruptcy Code as well as section 156(c) of title 28 of the United States Code. Such relief is warranted under Bankruptcy Rules 2002(f), 2014(a), 2016, 6003(a) and 6004, Bankruptcy Local Rules 2014-1 and 9013, and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

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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.

## BACKGROUND

2. 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 First Day Declaration and is fully incorporated herein by reference.

3. 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 yet been appointed.

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

## KCC’S RETENTION

5. The proposed terms of retention are set forth in the KCC Agreement for Services attached hereto as Exhibit B (the “**Services Agreement**”); *provided, however*, that the Debtors are seeking approval solely with respect to services and terms and provisions that are consistent with this Application and the Retention Order.

6. The Debtors have numerous potential creditors and other parties-in interest in the Chapter 11 Cases. Although the Office of the Clerk of the Bankruptcy Court (the “**Clerk’s Office**”) ordinarily would serve notices on the Debtors’ creditors and other parties-in interest and administer claims against the Debtors, the Clerk’s Office may not have the resources to undertake such tasks. Accordingly, the Debtors propose to engage KCC to act as the Claims and Noticing Agent to perform the various services described in this Application. This retention is the most effective and

efficient manner of noticing the numerous creditors and parties-in-interest of the filing of the Chapter 11 Cases and other developments related thereto. Moreover, the Debtors submit that KCC's rates are competitive and reasonable given KCC's quality of service and expertise. For these reasons, as more fully set forth below, the Debtors submit that their selection of KCC to act as the Claims and Noticing Agent is appropriate under the circumstances and in the best interests of their estates.

### **KCC'S QUALIFICATIONS**

7. KCC has acted as the claims, noticing, and solicitation agent in numerous cases of comparable size, including several cases that were commenced in the United States Bankruptcy Court for this District. *See, e.g., In re EP Energy Corporation*, Case No. 19-35654 (MI) (Bankr. S.D. Tex. Oct. 3, 2019); *In re Halcón Resources Corporation*, Case No. 19-34446 (DRJ) (Bankr. S.D. Tex. Aug. 7, 2019); *In re Legacy Reserves Inc.*, Case No. 19-33395 (MI) (Bankr. S.D. Tex. June 18, 2019); *In re Neighbors Legacy Holdings, Inc.*, Case No. 18-33836 (MI) (Bankr. S.D. Tex. July 12, 2018); *In re Cobalt International Energy, Inc.*, Case No. 17-36709 (MI) (Bankr. S.D. Tex. Dec. 14, 2017); *In re Linc USA GP*, Case No. 16-32689 (DRJ) (Bankr. S.D. Tex. May 29, 2016); *In re Sherwin Alumina Company, LLC*, Case No. 16-20012 (DRJ) (Bankr. S.D. Tex. Jan. 11, 2016).

8. By appointing KCC as the Claims and Noticing Agent in the Chapter 11 Cases, the distribution of notices and the processing of claims will be expedited, and the Clerk will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

### **SERVICES TO BE PROVIDED BY KCC**

9. Specifically, KCC will perform the following tasks in its role as Claims and Noticing Agent (the "**KCC Services**"), as well as all quality control relating thereto:

- (a) prepare and serve required notices and documents in the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the

form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of the Chapter 11 Cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar dates, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of the Chapter 11 Cases;

- (b) maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs (collectively, the "**Schedules**"), listing the Debtors' known creditors and the amounts owed thereto;
- (c) maintain (i) a list of all potential creditors, equity holders and other parties-in-interest and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010, and update and make said lists available upon request by a party in interest or the Clerk;
- (d) furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) provide an electronic interface for filing proofs of claim;
- (g) for all notices, motions, orders or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- (h) process all proofs of claim received, including those received by the Clerk's office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;

- (i) maintain the official claims register for each Debtor (the “**Claims Registers**”) on behalf of the Clerk; upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- (j) implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (k) record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (l) relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to KCC’s offices, not less than weekly;
- (m) upon completion of the docketing process for all claims received to date for each Chapter 11 Case, turn over to the Clerk copies of the Claims Registers for the Clerk’s review (upon the Clerk’s request);
- (n) monitor the Court’s docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the Claims Registers;
- (o) assist in the dissemination of information to the public and respond to requests for administrative information regarding the Chapter 11 Cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- (p) assist with the preparation of ballots and other related services for the purposes of soliciting votes to accept or reject a plan of reorganization;
- (q) receive and tabulate ballots, inspect ballots for conformity to voting procedures, date stamp and number ballots consecutively, provide computerized balloting database services;
- (r) prepare voting reports by plan class, creditor or equity holder, and amount for review and approval by the Debtors;
- (s) generate an official ballot certification and testify, if necessary, in support of the ballot tabulation results;
- (t) manage and coordinate any distributions pursuant to a confirmed plan of reorganization or otherwise;

- (u) if the Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's office within three (3) days of the notice to KCC of entry of the order converting the Chapter 11 Cases;
- (v) thirty (30) days prior to the close of the Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing KCC and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of the Chapter 11 Cases;
- (w) within seven (7) days of notice to KCC of entry of an order closing the Chapter 11 Cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the Chapter 11 Cases;
- (x) at the close of the Chapter 11 Cases, (i) box and transport all original documents, in proper format, as provided by the Clerk's office, to (A) the Philadelphia Federal Records Center, located at 14700 Townsend Road, Philadelphia, PA 19154, or (B) any other location requested by the Clerk's office, and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims; and
- (y) provide such other claims processing, noticing, plan solicitation, tabulation and related administrative services as may be requested from time to time by the Debtors.

10. The Claims Registers will be open to the public for examination without charge during regular business hours and on a case-specific website maintained by KCC.

#### **KCC'S COMPENSATION**

11. The Debtors propose to compensate KCC on substantially the terms and conditions set forth in the Services Agreement, upon receipt of reasonably detailed invoices setting forth the services provided by KCC during the prior month and the rates charged for such services performed.

12. The Debtors respectfully request that the undisputed fees and expenses incurred by KCC in the performance of the KCC Services, in accordance with the fee schedule appended to the Services Agreement, be treated as administrative expenses of the Debtors' estates pursuant to section 156(c) of title 28 of the United States Code and section 503(b)(1)(A) of the Bankruptcy

Code and be paid in the ordinary course of business without further application to or order of the Court. KCC agrees to maintain records of all services performed, showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”), counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party in interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Services Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute. If resolution is not achieved, the parties may seek resolution of the matter from the Court.

13. Prior to the Petition Date, the Debtors provided KCC a retainer in the amount of \$45,000, which KCC seeks to first apply to its prepetition invoices, if any, and, thereafter, to have the retainer replenished to the original amount. KCC then seeks to hold the retainer under the Services Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred in rendering the KCC Services hereunder, with any remainder to be held as security for the payment of other approved fees and expenses incurred in rendering other services under the Services Agreement.

14. KCC has reviewed its conflicts system to determine whether it has any relationships with the creditors and parties in interest identified by the Debtors. To the best of the Debtors’ knowledge, information, and belief, and except as disclosed in the Jordan Declaration, KCC has represented that it neither holds nor represents any interest materially adverse to the Debtors’ estates in connection with any matter on which it would be employed.

### **KCC'S DISINTERESTEDNESS**

15. In connection with its retention as Claims and Noticing Agent, KCC represents in the Jordan Declaration, among other things, that:

- (a) KCC is not a creditor of the Debtors;
- (b) KCC will not consider itself employed by the United States government and will not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in the Chapter 11 Cases;
- (c) by accepting employment in the Chapter 11 Cases, KCC waives any rights to receive compensation from the United States government in connection with the Debtors' Chapter 11 Cases;
- (d) KCC will not employ any past or present employee of the Debtors for work that involves the Chapter 11 Cases;
- (e) in its capacity as the Claims and Noticing Agent in the Chapter 11 Cases, KCC will not be an agent of the United States and will not act on behalf of the United States; and
- (f) KCC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged.

16. If any new facts or circumstances are discovered that require additional disclosure, KCC will supplement its disclosure to the Court.

### **EMERGENCY CONSIDERATION**

17. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Application 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. The Debtors believe that their retention of KCC to act as the Claims and Noticing Agent is necessary to avoid undue administrative burden on the Debtor's estates during the first twenty-one (21) days of the case. Failure to receive the applicable relief during the first twenty-one (21) days of the Chapter 11 Cases would likely leave the Debtors unable to meet their obligations as debtors in possession. 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 Application on an emergency basis.

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

18. 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 Application 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**

19. 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 Retention Order once entered. Nothing contained in the Retention 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.

### CONSENT TO JURISDICTION

20. The Debtors consent to the entry of a final judgment or order with respect to this Application if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

### NOTICE

21. Notice of this Application will be given to: (i) the U.S. Trustee; (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

22. A copy of this Application is available on (i) the Court's website: [www.txs.uscourts.gov](http://www.txs.uscourts.gov), and (ii) the website maintained by KCC at [www.kccllc.net/hicrush](http://www.kccllc.net/hicrush).

*[Remainder of page intentionally left blank]*

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

Executed this 12th day of July, 2020.

/s/ J. Philip McCormick, Jr.

J. Philip McCormick, Jr.  
Chief Financial Officer

**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

**EXHIBIT A**

**Jordan Declaration**

**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	

**DECLARATION OF ROBERT JORDAN IN SUPPORT  
OF DEBTORS’ APPLICATION FOR ORDER APPOINTING  
KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS, NOTICING,  
AND SOLICITATION AGENT EFFECTIVE AS OF THE PETITION DATE**

I, Robert Jordan, being duly sworn, state the following under penalty of perjury:

1. I am a Managing Director of Corporate Restructuring Services for Kurtzman Carson Consultants LLC (“**KCC**”), whose offices are located at 222 N. Pacific Coast Highway, 3<sup>rd</sup> Floor, El Segundo, California 90245, telephone number (310) 823-9000. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This Declaration is made in support of the Debtors’ application for entry of an order, pursuant to section 156(c) of title 28 of the United States Code, sections 105(a), 327, 503, and 1107 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002(f), 2014(a), 2016, 6003(a) and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and

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<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.

Rules 2014-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), appointing KCC as official claims, noticing, and solicitation agent (“**Claims and Noticing Agent**”) in the Debtors’ Chapter 11 Cases (the “**Application**”)<sup>2</sup> effective as of the Petition Date and on the terms and conditions set forth in the Services Agreement attached to the Application as Exhibit B.

3. As agent and custodian of the Court records pursuant to section 156(c) of title 28 of the United States Code and section 327 of the Bankruptcy Code, KCC will perform at the request of the Office of the Clerk of the Court (the “**Clerk’s Office**”) the noticing and claims-related services specified in the Application. In addition, at the Debtors’ request, KCC will perform such other noticing, claims, balloting, technical, administrative, and support services specified in the Application.

4. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, balloting, and other related services critical to the effective administration of chapter 11 cases. Indeed, KCC has developed efficient and cost-effective methods to handle properly the voluminous mailings associated with the noticing, claims processing, and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders, and all parties in interest. Further, KCC will work with the Clerk’s Office to ensure that such methodology conforms with all of the Court’s procedures, the Local Rules, and the provisions of any orders entered by this Court.

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

5. KCC has substantial experience in matters of this size and complexity and has acted as the official notice, claims, and solicitation agent in many large bankruptcy cases in this District and other jurisdictions. *See, e.g., In re EP Energy Corporation*, Case No. 19-35654 (MI) (Bankr. S.D. Tex. Oct. 3, 2019); *In re Halcón Resources Corporation*, Case No. 19-34446 (DRJ) (Bankr. S.D. Tex. Aug. 7, 2019); *In re Legacy Reserves Inc.*, Case No. 19-33395 (MI) (Bankr. S.D. Tex. June 18, 2019); *In re Neighbors Legacy Holdings, Inc.*, Case No. 18-33836 (MI) (Bankr. S.D. Tex. July 12, 2018); *In re Cobalt International Energy, Inc.*, Case No. 17-36709 (MI) (Bankr. S.D. Tex. Dec. 14, 2017); *In re Linc USA GP*, Case No. 16-32689 (DRJ) (Bankr. S.D. Tex. May 29, 2016); *In re Sherwin Alumina Company, LLC*, Case No. 16-20012 (DRJ) (Bankr. S.D. Tex. Jan. 11, 2016).

6. KCC represents, among other things, the following:

- (a) KCC is not a creditor of the Debtors;
- (b) KCC is a “disinterested person” as that term is defined in Bankruptcy Code section 101(14) with respect to the matters upon which it is to be engaged;
- (b) KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in the Chapter 11 Cases;
- (c) by accepting employment in the Chapter 11 Cases, KCC waives any rights to receive compensation from the United States government as Claims and Noticing Agent;
- (d) in its capacity as the Claims and Noticing Agent in the Chapter 11 Cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- (e) KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in the Chapter 11 Cases;
- (f) in its capacity as Claims and Noticing Agent in the Chapter 11 Cases, KCC will not intentionally misrepresent any fact to any person;
- (g) KCC shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers; and

- (h) none of the services provided by KCC as Claims and Noticing Agent shall be at the expense of the Clerk's Office.

7. In connection with the preparation of this Declaration, I caused to be submitted for review by our conflicts system the names of all known potential parties in interest (the "**Parties-in-Interest**") in this case. The list of potential Parties-in-Interest was provided by the Debtors and included, among other parties, the Debtors, the Debtors' current and former directors and officers, significant stockholders, secured creditors, and top 30 unsecured creditors. The results of the conflicts check were compiled and reviewed by employees of KCC, under my supervision. At this time, KCC is not aware of any relationship which would present a disqualifying conflict of interest.

8. KCC may have relationships with certain Potential Parties in Interest as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as noticing, claims, balloting agent or administrative advisor for another chapter 11 debtor. However, given KCC's neutral position as Claims and Noticing Agent or administrative advisor in any other cases, KCC does not view such relationships as real or potential conflicts. Further, to the best of my knowledge, any such relationship is completely unrelated to these Chapter 11 Cases. Accordingly, to the best of my knowledge, KCC and each of its employees are "disinterested persons," as that term is defined in section 101(14) of the Bankruptcy Code, and neither KCC nor any of its employees hold or represent an interest adverse to the Debtors' estates related to any matter for which KCC will be employed.

9. KCC has and will continue to represent clients in matters unrelated to the Debtors' Chapter 11 Cases. In addition, KCC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals, and other parties in interest that may be involved in the Debtors' Chapter 11 Cases in matters unrelated to the Debtors' Chapter 11 Cases. KCC may also provide professional services to entities or persons that may be creditors or parties

in interest in the Debtors' Chapter 11 Cases, which services do not directly relate to, or have any direct connection with, the Debtors' Chapter 11 Cases or the Debtors.

10. KCC is an indirect subsidiary of Computershare Limited ("Computershare"). Computershare is a financial services and technologies provider for the global securities industry. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that Computershare and its affiliates maintain do not create an interest of KCC that would be materially adverse to the Debtors' estates or any class of creditors or equity security holders. Computershare provides administrative services to The Vanguard Group who is listed as an equity holder of the Debtors.

11. To the best of my knowledge and except as disclosed herein, KCC neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed and it is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code as referred to in section 327(a) of the Bankruptcy Code. KCC will supplement its disclosure to the Court if any facts or circumstances are discovered that would require disclosure.

12. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to file promptly a supplemental affidavit.

13. In performing the services of notice and claims agent, KCC will charge the Debtors the rates set forth in the Services Agreement.

14. Prior to the Petition Date, the Debtors paid KCC a retainer in the amount of \$45,000 (the "**Retainer**"). Through the Application, KCC seeks to first apply the Retainer to all prepetition invoices, which Retainer shall be replenished to the original Retainer amount, and thereafter, to

hold such Retainer under the Engagement Agreement during the Debtors' Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 12, 2020

/s/ Robert Jordan

Robert Jordan

Managing Director

Kurtzman Carson Consultants LLC

222 N. Pacific Coast Highway, 3<sup>rd</sup> Floor

El Segundo, California 90245

Telephone: (310) 823-9000

**EXHIBIT B**

Services Agreement

## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 9 day of April 2020, between Hi-Crush Inc. (together with its certain of its subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

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<sup>1</sup> The term Company shall include, to the extent applicable, Hi-Crush Inc., as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Hi-Crush Inc.’s chapter 11 case.

## KCC AGREEMENT FOR SERVICES

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable and documented transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires, and requests in writing, services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$20,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one half percent (1 ½%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges, if any, shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue; provided that KCC agrees to provide prompt written notice to the Company of any increase in fees and/or charges as a result of the foregoing.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) and section 327 of the Bankruptcy Code to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's

## KCC AGREEMENT FOR SERVICES

chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the “Retention Order”). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$45,000 (the “Retainer”) that may be held by KCC as security for the Company’s payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term “program” shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC’s performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company’s use during and in connection with the services provided by KCC under this Agreement.

### IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

### V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency

## KCC AGREEMENT FOR SERVICES

or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) bad faith, gross negligence, actual fraud, or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, or (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.

## KCC AGREEMENT FOR SERVICES

### VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable and documented counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence, bad faith, actual fraud, or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. In no event shall either party be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

## KCC AGREEMENT FOR SERVICES

### X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

### XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, 3rd Floor  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133  
E-Mail: dfoster@kccllc.com

Hi-Crush Inc.  
1330 Post Oak Blvd., Suite 600  
Houston, TX 77056  
Attn: Mark C. Skolos  
Tel: (713) 980-6200  
Email: mskolos@hicrush.com

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity,

## **KCC AGREEMENT FOR SERVICES**

legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

### **XV. COUNTERPARTS; EFFECTIVENESS**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### **XVI. ASSIGNMENT**

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

### **XVII. ATTORNEYS' FEES**

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable and documented attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]



## KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

A handwritten signature in black ink, appearing to read 'Evan Gershbein', written over a horizontal line.

BY: Evan Gershbein

DATE: 4/9/20

TITLE: EVP, Corporate Restructuring Services

Company

A handwritten signature in black ink, appearing to read 'Mark C. Skolos', written over a horizontal line. The signature is circled in blue ink.

BY: Mark C. Skolos

DATE: 4/08/20

DATE:

TITLE: General Counsel/Secretary

**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 AUTHORIZING RETENTION AND APPOINTMENT OF  
KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS, NOTICING,  
AND SOLICITATION AGENT EFFECTIVE AS OF THE PETITION DATE**

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

Upon the application (the “**Application**”)<sup>2</sup> of the Debtors for an order authorizing the retention and employment of Kurtzman Carson Consultants LLC (“**KCC**”) as claims, noticing, and solicitation agent, under section 156(c) of title 28 of the United States Code, sections 105(a), 327, 503, and 1107 of the Bankruptcy Code, Bankruptcy Rules 2002(f), 2014(a), 2016, 6003(a) and 6004, and Local Rules 2014-1 and 9013-1, effective to the Petition Date, to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and (iii) provide such other administrative services, as required by the Debtors, that would fall within the purview of services

<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 Application.

to be provided by the Clerk's Office; and upon the Jordan Declaration submitted in support of the Application; and the Debtors having estimated that there are thousands of creditors in the Chapter 11 Cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under section 156(c) of title 28 of the United States Code to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in these Chapter 11 Cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and the Court being satisfied that KCC has the capability and experience to provide such services and that KCC does not hold an interest adverse to the Debtors or their estates respecting the matters upon which it is to be engaged; and all objections, if any, to entry of this Order having been withdrawn, resolved, or overruled; and good and sufficient notice of the Application having been given; and no other or further notice being required; and it appearing that the employment of KCC is in the best interests of the Debtors, their estates, and their creditors; and sufficient cause appearing therefor; it is hereby

**ORDERED THAT:**

1. Notwithstanding the terms of the Services Agreement attached to the Application, the Application is approved solely as set forth in this Order.
2. The Debtors are authorized to retain KCC effective as of the Petition Date under the terms of the Services Agreement, and KCC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and all related tasks, all as described in the Application as the KCC Services.
3. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in the Chapter 11 Cases and is authorized and

directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. KCC is authorized and directed to provide an electronic interface for filing of proofs of claim and to obtain a post office box or address for the receipt of proofs of claim. KCC shall provide access to the claims register, including complete proofs of claim with attachments, if any, without charge.

5. KCC is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement, upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. KCC shall maintain records of all services performed, showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the U.S. Trustee, counsel for the Debtors, counsel to the Ad Hoc Group, counsel for any official committee monitoring the expenses of the Debtors and any party in interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Services Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

10. KCC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Services Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

11. The Debtors shall indemnify the Indemnified Parties (as defined in the Services Agreement) under the terms of the Services Agreement as modified by this Order.

12. The Indemnified Parties shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.

13. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify an Indemnified Party, or provide contribution or reimbursement to an Indemnified Party for any claim or expense that is: (a) judicially determined (the determination having become final) to have arisen from the Indemnified Party's gross negligence, willful misconduct, breach of fiduciary duty (if any), self-dealing or fraud; (b) for a contractual dispute in which the Debtors allege the breach of an Indemnified Party's contractual obligations if this Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; (c) of any type for which the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re Thermadyne Holding Corp.*, 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002); or (d) settled prior to a judicial determination under (a) or (b) but determined by the Court, after notice and a hearing, to

be a claim or expense for which an Indemnified Party should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by this Order.

14. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (b) the entry of an order closing the Chapter 11 Cases, an Indemnified Party believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the advancement of defense costs, such Indemnified Party must file an application therefor in the Court, and the Debtors may not pay any such amounts to such Indemnified Party before the entry of an order by the Court approving the payment. This paragraph is intended only to specify the period of time through which the Court shall have jurisdiction over any request for fees and expenses by the Indemnified Parties for indemnification, contribution, or reimbursement and does not limit the duration of the Debtors' obligation to indemnify the Indemnified Parties. All parties in interest shall retain the right to object to any demand by the Indemnified Parties for indemnification, contribution, or reimbursement.

15. In the event KCC is unable to provide the services set out in this Order, KCC will immediately notify the Clerk and Debtors' counsel and cause to have all original proofs of claim and computer information turned over to another claims, noticing, and solicitation agent with the advice and consent of the Clerk and Debtors' counsel.

16. Notwithstanding the Application or the Services Agreement, to the extent the Debtors wish to expand the scope of KCC's services beyond those services set forth in the Application and the Services Agreement, the Debtors shall be required to seek further approval from this Court.

17. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

18. Notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

19. Notwithstanding any term in the Services Agreement to the contrary, KCC's liability during the Chapter 11 Cases shall not be limited to the amount billed or paid under the Services Agreement.

20. Notwithstanding any term in the Services Agreement to the contrary, KCC shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court.

21. In the event of any inconsistency between the Services Agreement, the Application and this Order, this Order shall govern.

22. 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).

23. If KCC seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Services Agreement, the

invoices and supporting time records for the attorneys' fees and expenses shall be included in KCC's own applications, both interim and final, but determined by this Court after notice and a hearing.

24. In the event the Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code and if claims agent representation would be necessary in the converted chapter 7 cases, KCC shall continue to be paid in accordance with 28 U.S.C. § 156(c) under the terms set forth herein.

25. After entry of an order terminating KCC's services, upon the closing of the Chapter 11 Cases or for any other reason, KCC shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, and transmitting to the Clerk's office all claims in an electronic format, if applicable, and shall be compensated by the Debtors in connection therewith.

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

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

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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE