

**Fill in this information to identify the case:**

Debtor Hi-Crush Inc.

United States Bankruptcy Court for the: Southern District of Texas  
(State)

Case number 20-33495

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

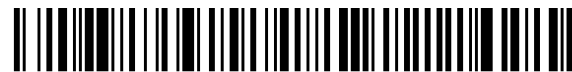
Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>AGRA INDUSTRIES, INC.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor <u>None</u>	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>AGRA INDUSTRIES, INC.</u> <u>1211 W WATER STREET</u> <u>MERRILL, WI 54476, USA</u>	
	Contact phone <u>715-536-9584</u>	Contact phone _____
	Contact email <u>kvandenheuvel@agraind.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): <u>None</u>	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 984 \_\_\_ \_\_\_

7. How much is the claim? \$ 816,000.00. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
  
Executory Contract: Master Manufacturing and Supply Agreement

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

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13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ 48,000.00

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/12/2020  
MM / DD / YYYY

/s/Kirk Van Den Heuvel  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Kirk Van Den Heuvel  
First name Middle name Last name

Title Chief Financial Officer

Company Agra Industries, Inc.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 554-5810 | International (781) 575-2032

<b>Debtor:</b> 20-33495 - Hi-Crush Inc. <b>District:</b> Southern District of Texas, Houston Division		
<b>Creditor:</b> AGRA INDUSTRIES, INC. 1211 W WATER STREET  MERRILL, WI, 54476 USA <b>Phone:</b> 715-536-9584 <b>Phone 2:</b> 715-574-2226 <b>Fax:</b> 715-536-9587 <b>Email:</b> kvandenheuvel@agraind.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Creditor	
<b>Other Names Used with Debtor:</b> None	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Executory Contract: Master Manufacturing and Supply Agreement	<b>Last 4 Digits:</b> Yes - 984	<b>Uniform Claim Identifier:</b> None
<b>Total Amount of Claim:</b> 816,000.00	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No  <b>Amount of 503(b)(9):</b> Yes: 48,000.00  <b>Based on Lease:</b> No  <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Kirk Van Den Heuvel on 12-Aug-2020 6:34:33 p.m. Eastern Time  <b>Title:</b> Chief Financial Officer  <b>Company:</b> Agra Industries, Inc.		

# Hi Crush Frac Feeder Order Summary

August 12, 2020

Purchase Summary			Manufacturing & Supply Agreement	
Date	Purchase Order	Qty		
7/25/2019	G10064	6	<b>Five Year Term:</b> July 24, 2019 - July 23, 2020	
7/25/2019	G10065	6	<b>Deficiency Payment:</b>	
7/25/2019	G10066	6	Minimum Quarterly Purchases: 12 Units	
7/25/2019	G10067	6	Deficiency Payment per Unit: \$4,000	
9/12/2019	G10079	6	<b>Bankruptcy Filed:</b> July 12, 2020	
1/14/2020	602-9993-20B602-05	6		
<b>Total To Date</b>		<b>36</b>		

Claim Summary							
		Units				Dollars	
		Units Purchased	Credit Used	Excess Credit	Deficient Units	Deficient Invoiced	Deficient Not Invoiced
<b>YEAR 1</b>							
Q3	7/1/19-9/30/19	30	0	18	0	\$ -	
Q4	10/1/19-12/31/19	0	12	6	0	\$ -	
<b>YEAR 2</b>							
Q1	1/1/20-3/31/20	6	6	0	0	\$ -	
Q2	4/1/20-6/30/20				12	\$ 48,000	
Q3	7/1/20-9/30/20				12		\$ 48,000
Q4	10/1/20-12/31/20				12		\$ 48,000
<b>YEAR 3</b>							
Q1	1/1/21-3/31/21				12		\$ 48,000
Q2	4/1/21-6/30/21				12		\$ 48,000
Q3	7/1/21-9/30/21				12		\$ 48,000
Q4	10/1/21-12/31/21				12		\$ 48,000
<b>YEAR 4</b>							
Q1	1/1/22-3/31/22				12		\$ 48,000
Q2	4/1/22-6/30/22				12		\$ 48,000
Q3	7/1/22-9/30/22				12		\$ 48,000
Q4	10/1/22-12/31/22				12		\$ 48,000
<b>YEAR 5</b>							
Q1	1/1/23-3/31/23				12		\$ 48,000
Q2	4/1/23-6/30/23				12		\$ 48,000
Q3	7/1/23-9/30/23				12		\$ 48,000
Q4	10/1/23-12/31/23				12		\$ 48,000
<b>YEAR 6</b>							
Q1	1/1/24-3/31/24				12		\$ 48,000
Q2	4/1/24-6/30/24				12		\$ 48,000
						<b>\$ 48,000</b>	<b>\$ 768,000</b>
<b>Proof of Claim Total</b>							<b>\$ 816,000</b>



Invoice Number: AI 11756  
 Page: 1  
 Date: 6/30/2020  
 Project Invoice

Fed ID: 39-2009872

Fed ID:  
 984

Currency: USD US DOLLAR

B Hi Crush  
 I FB Industries USA Inc.  
 L 1330 Post Oak Blvd  
 L Suite 600  
 T Houston TX 77056  
 O USA

S Hi Crush  
 H 13800 W Interstate 20 E  
 I Odessa TX 79765  
 P USA  
 T  
 O

Proj Contract Master Svcs Agreement

Order	Purchase Order	Packages	Prepaid	Weight	Ship Via	Terms
AI00001596						Net 30
Line/Rel	Qty Ordered	Qty Shipped	Qty Back Ordered	Unit Price	Extended Price	

1 Milestone: 01  
 Description: 2020 Frac Feeders Purchase Contract

Net: 48,000.00

\$48,000.00 Minimum Purchase 12 units @ \$4,000.00

**Project Invoice Summary:**

Milestones On Current Invoice:	48,000.00
Milestones Previously Invoiced:	0.00
<b>Project To Date M/S Invoiced:</b>	<b>48,000.00</b>
Less Retention:	0.00
<b>Total Eligible To Invoice:</b>	<b>48,000.00</b>
Less Previously Invoiced:	0.00
Less Advance Payment:	0.00
<b>Net Invoice Amount:</b>	<b>48,000.00</b>

9. Minimum Purchases.  
 Minimum Quarterly Purchase Amounts. With respect to each calendar quarter during the Term, HCR shall order not less than twelve (12) units of the Products from Agra pursuant to one or more Purchase Orders delivered during such calendar quarter ("Minimum Quarterly Purchase Amount"). If in any calendar quarter during the Term, HCR does not order Products as required to meet the Minimum Quarterly Purchase Amount, then HCR shall pay to Agra, within thirty (30) days after the conclusion of the applicable calendar quarter, an amount in cash equal to the product of:  
 (a) the amount which is the difference between the Product units actually ordered by HCR during the applicable calendar quarter and the Minimum Quarterly Purchase Amount; multiplied by (b) \$4,000 (a "Deficiency Payment").

Sales Amount	48,000.00
Freight	0.00
Misc Charges	0.00
Sales Tax	0.00
Prepaid Amount	0.00
<b>Total</b>	<b>48,000.00</b>

## MASTER MANUFACTURING AND SUPPLY AGREEMENT

This Master Manufacturing and Supply Agreement (the “**Agreement**”) is made effective as of July 24, 2019 (the “**Effective Date**”), by and between Agra Industries, Inc., a Wisconsin corporation (“**Agra**”), and Hi-Crush Inc., a Delaware corporation (“**HCR**”). Agra and HCR may be referred to each as a “**Party**” and collectively as the “**Parties**.”

### RECITALS:

A. Agra has been engaged in developing certain proprietary technology (including intellectual property) and know-how related to the manufacture and use of a volumetric feeder for use in the hydraulic proppant fracturing processes as further defined in **Exhibit A** attached hereto and incorporated herein by reference (the “**Technology**”) within the oilfield services industry (“**Field of Use**”), and Agra is in the process of applying for a patent on certain aspects of the Technology in the United States and possibly in other countries as of the Effective Date.

B. HCR, including through its division PropStream, provides proppant and logistics services in the North American petroleum industry, including through the sale of its container systems and silo systems.

C. Agra wishes to manufacture the products described in **Exhibit B** attached hereto and incorporated herein by reference (the “**Products**”) which will incorporate or be based upon the Technology.

D. HCR wishes to have Agra manufacture and sell to HCR the Products produced in accordance with the terms of this Agreement.

E. Agra wishes to manufacture and sell the Products to HCR upon the terms set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing and the terms, conditions, and covenants contained in this Agreement, the parties agree as follows:

1. **Appointment.** Subject to the terms and conditions of this Agreement, during the Term, HCR shall purchase Products exclusively from Agra within the Field of Use, and Agra shall manufacture and sell Products exclusively to HCR within the Field of Use.

2. **Term.** The term of this Agreement shall begin on the Effective Date and shall expire five (5) years thereafter (the “**Initial Term**”), unless sooner terminated pursuant to the provisions of this Agreement. Upon the expiration of the Initial Term or a Renewal Term as applicable, the term of this Agreement will automatically renew for additional successive one (1) year terms unless either Party provides written notice of non-renewal at least one hundred twenty (120) days prior to the end of the then-current term (each, a “**Renewal Term**” and together with the Initial Term, the “**Term**”), unless any Renewal Term is sooner terminated pursuant to the

provisions of this Agreement. If the Initial Term or any Renewal Term is renewed for any Renewal Term(s) pursuant to this Section 2, the terms and conditions of this Agreement during each such Renewal Term will be the same as the terms in effect immediately prior to such renewal. In the event either Party provides timely notice of its intent not to renew this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the Initial Term or then-current Renewal Term, as applicable.

3. Purchase Orders. From time to time and at any time, HCR may submit one or more purchase orders to Agra (each a "**Purchase Order**"), offering to purchase one or more of the Products. Each Purchase Order shall include at least (a) the applicable Purchase Price for such Products; and (b) the quantity of such Products ordered under that Purchase Order; provided, however, that the specific and non-printed terms of any Purchase Order shall not be inconsistent with any terms of this Agreement. Any terms of the Purchase Order, including, without limitation, the pre-printed terms on the reverse side of such Purchase Order, which are inconsistent with this Agreement, are hereby rejected and are hereby expressly superseded by the terms of this Agreement.

4. Purchase Price. HCR shall purchase the Products from Agra at the purchase price per unit set forth and described on **Exhibit C** attached hereto and incorporated herein by reference (the "**Purchase Price**").

5. Delivery. All Products ordered by HCR pursuant to any Purchase Order shall be delivered FOB shipping point, or at such other location as may be agreed to by the Parties. Title to and risk of loss for all such Products delivered to HCR shall pass to HCR at the shipping point, or such other location as may be agreed to by the Parties

6. Shipping Charges, Insurance and Taxes. HCR shall pay for all shipping charges and insurance costs. In addition, the Purchase Price is exclusive of, and HCR is solely responsible for and shall pay all taxes with respect to, or measured by, the manufacture, sale, shipment, or use of the Products (including interest and penalties thereon); provided, however, that HCR shall not be responsible for any taxes imposed on, or with respect to, Agra's income, revenues, gross receipts, personnel or real or personal property or other assets.

7. Invoices. Agra shall issue an invoice to HCR for each Purchase Order received by Agra (each an "**Invoice**"). Each Invoice shall be submitted to [Payables@hicrush.com](mailto:Payables@hicrush.com) and shall set forth in reasonable detail the amounts payable by HCR for the Products under the applicable Purchase Order. HCR shall pay to Agra all undisputed invoiced amounts within net thirty (30) days from the date of its receipt of the applicable Invoice (an Invoice shall be considered received by HCR on the date that is one business day after Agra's submission of such Invoice to [Payables@hicrush.com](mailto:Payables@hicrush.com)). The specific and non-printed terms of any Invoice shall not be inconsistent with any terms of this Agreement, and any other terms of the Invoice, including the pre-printed terms on the reverse side of such Invoice and any terms of the Invoice which are inconsistent with this Agreement, are hereby rejected and are hereby expressly superseded by the terms of this Agreement.



8. Invoice Disputes. HCR shall notify Agra in writing of any dispute with any Invoice received from Agra within thirty (30) days from HCR's receipt of such Invoice. HCR will be deemed to have accepted all Invoices for which Agra does not receive timely notification of dispute, and HCR shall pay all undisputed amounts due under such Invoices within the period set forth in this Agreement. The Parties shall seek to resolve any such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute.

9. Minimum Purchases.

(a) Minimum Quarterly Purchase Amounts. With respect to each calendar quarter during the Term, HCR shall order not less than twelve (12) units of the Products from Agra pursuant to one or more Purchase Orders delivered during such calendar quarter ("**Minimum Quarterly Purchase Amount**"). If in any calendar quarter during the Term, HCR does not order Products as required to meet the Minimum Quarterly Purchase Amount, then HCR shall pay to Agra, within thirty (30) days after the conclusion of the applicable calendar quarter, an amount in cash equal to the product of: (a) the amount which is the difference between the Product units actually ordered by HCR during the applicable calendar quarter and the Minimum Quarterly Purchase Amount; multiplied by (b) \$4,000 (a "**Deficiency Payment**"). For example, if during a calendar quarter HCR orders ten (10) units, then the Deficiency Payment shall equal \$8,000 (2 units of Product x \$4,000).

(b) Excess Order Amount Credits. If HCR orders more than twelve (12) units of Product in any calendar quarter, each unit of Product ordered in excess over the Minimum Quarterly Purchase Amount for that calendar quarter shall result in a single unit credit granted to HCR (each an "**Excess Order Amount Credit**"), which may be applied by HCR to any calendar quarter in its sole discretion. For example, if in a calendar quarter HCR orders seventeen (17) units of Product, HCR would receive five (5) Excess Order Amount Credits, each of which could be applied by HCR in any future calendar quarter(s). Excess Order Amount Credits shall carry over quarter to quarter until used or applied by HCR. Excess Order Amount Credits have no value independent of their application in accordance with this paragraph and upon termination the Excess Order Amount Credits shall disappear without the obligation of Agra to pay, rebate or otherwise compensate HCR therefor. Excess Order Amount Credits shall not be applied to any calendar quarters prior to their issuance and will not entitle HCR to any refund or offset of any Deficiency Payment made hereunder. Agra and HCR shall work in good faith to track and agree upon the number of Excess Order Amount Credits which HCR holds at any time, including the sharing of appropriate documentation or records which substantiate either Party's calculation. Upon request by either Party, the other Party will provide its calculation of the then current number of Excess Order Amount Credits held by HCR.

(c) Request for Invoicing; Proration. Upon request by HCR, Agra will issue an invoice to HCR for the full amount of any Deficiency Payment, provided that such invoice, invoice request, or related process will not extend the thirty (30) day time period for making the

Deficiency Payment. For any partial calendar quarter during the Term, the Minimum Quarterly Purchase Amount shall be equitably pro-rated.

(d) Remedy. The Deficiency Payment shall be Agra's sole remedy, and HCR's sole liability, for any failure by HCR to purchase the Minimum Quarterly Purchase Amount.

10. Forecasts and Maximum Orders. Upon request by Agra, HCR will provide a ninety (90) day rolling forecast to Agra during the first week of each month, for all Products. The Parties acknowledge that such forecasts provided are for the convenience of the Parties and shall have no binding legal effect. In addition, Agra shall not be obligated to produce more than twenty (20) Products during any thirty (30) day period, provided however, in the event HCR orders more than twenty (20) Products during any thirty (30) days period Agra shall use commercially reasonable efforts to produce such quantity in accordance with the terms of this Agreement.

11. Scheduling. HCR will make commercially reasonable efforts to provide changes in a forecast within a reasonably prompt period after HCR is aware of a material and likely change in a forecast. Agra will make commercially reasonable effort to increase or decrease their production schedules to meet the demand on a timely basis. HCR will work in good faith to communicate to Agra the production priorities on an as needed basis.

12. Subcontract. Agra shall be permitted to subcontract the performance of any of its work, duties or obligations under or with respect to this Agreement, provided that Agra shall be and remain responsible for the performance, breach, acts or omissions of its subcontractors to the same extent as if such performance, breach, acts or omissions were by Agra or its employees directly.

13. Specifications. Agra will manufacture the Products in accordance with the specifications set forth in **Exhibit D** attached hereto (the "**Specifications**").

14. Place of Production. Agra shall manufacture the Products under this Agreement at its facility in Merrill, Wisconsin or at such other location(s) determined by Agra to be appropriate for the manufacture of the Products.

15. Tooling. All tooling used to manufacture the Products is owned by Agra. HCR has no right, title, or interest in or to any of such tooling.

16. Late Payments. Except for payments on any Invoice that HCR has timely disputed, HCR shall pay interest on all late payments of any amounts owed hereunder (whether during the Term or after the expiration or earlier termination of the Term), calculated daily and compounded monthly, at the lesser of the rate of one and one-half percent (1.5%) per month or the highest rate permissible under applicable law. HCR shall also reimburse Agra for all reasonable and documented costs incurred by Agra in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under this Agreement

or at law or in equity (which Agra does not waive by the exercise of any rights under this Agreement), if HCR fails to pay any undisputed amounts when due under this Agreement, Agra may (a) suspend the delivery of any Products, or (b) exercise its rights to terminate this Agreement pursuant to Section 19(a).

17. [Reserved]

18. Intellectual Property.

(a) Technology License.

(1) Subject to the terms and conditions of this Agreement, Agra hereby grants to HCR an exclusive, irrevocable (except as described in this Agreement), royalty-free, non-sublicensable (subject to the provisions set forth in this Agreement), non-assignable (subject to the provisions set forth in this Agreement) license to the Technology in the Field of Use during the Term as needed to use, sell, offer for sale, have manufactured (by Agra pursuant to this Agreement), and commercialize the Products by HCR and/or HCR's customers in the Field of Use. For avoidance of doubt, during the period of this exclusive license, Agra shall not retain any right to sell or offer to sell any Products to any third party in the Field of Use, or to use the Technology for the benefit of any third party in the Field of Use.

(2) For a period of ninety (90) days following the effective date of the termination or expiration of the Term (except in those instances where the Agreement was terminated by Agra for cause under Sections 19(a), (b), or (c) in which cases no such non-exclusive license shall be granted), HCR shall have, and Agra hereby grants, a non-exclusive license to continue to use the Technology solely as needed to offer for sale and sell any inventory of Products held by HCR at the time of such termination or expiration.

(3) The Technology includes, but is not limited to, patentable technology and the Technology license granted in Section 18(a) above shall include a license to any patents granted to and/or patent applications filed by Agra or its affiliates (including domestic and foreign patents and patent applications) relating to the Technology. Should no patent be granted, the Technology license shall continue to apply to the non-patented Technology and intellectual property licensed hereunder (including all rights, title, and interest in proprietary information, inventions, ideas, works of authorship, designs and derivative works arising from the Technology including without limitation, know-how; trade secrets; copyrightable materials; research data; and software developed to use for the purpose of analyzing the data obtained by the Technology). The licensed territory with regard to the Technology license granted in Section 18(a) shall be worldwide, but limited to the Field of Use. This Technology license does not extend to any other field of use, and Agra shall have the right to license the Technology in other fields of use at any time in its sole discretion.

(4) Unless the licenses to the Technology under this Agreement are terminated or expire, HCR agrees that it will not, directly or indirectly, challenge or assist any person or entity in challenging, in any jurisdiction: (a) Agra's rights, title, and interest in and to

the Technology, including related intellectual property; (b) the validity or Agra's ownership of the Technology, including related intellectual property; or (c) Agra's and its affiliates' rights to use and control the Technology.

(5) If Agra notifies HCR that Agra is unable or unwilling to manufacture, deliver, and/or sell to HCR any Product under this Agreement, or Agra fails to supply any Product ordered by HCR pursuant to a Purchase Order within thirty (30) days of the promised delivery date, then HCR shall have, and Agra does hereby grant, an irrevocable, worldwide, royalty-free, non-exclusive license to the Technology (including Further Developed Technology as described below) in the Field of Use with respect only to those Products which Agra is unable or unwilling to manufacture, deliver, and/or sell to HCR under this Agreement as set forth in this Section 18(a)(5), which shall include all rights to use, manufacture, have manufactured, commercialize, sell, offer to sell, and exploit the Technology, as well as the right to grant sublicenses of those rights to third parties to use or exploit the Technology to manufacture, sell, and/or lease only those Products which Agra is unable or unwilling to manufacture, deliver, and/or sell to HCR as set forth in this Section 18(a)(5), provided that (i) HCR shall notify Agra in the event it purchases or leases any products from a third party that incorporate the Technology licensed under this section, and (ii) HCR shall require any third party designing or manufacturing any Products for HCR to execute a nondisclosure agreement containing terms no less restrictive than the terms of Section 20 of this Agreement to govern their use of any confidential information of Agra.

(6) If Agra provides any notice of non-renewal of this Agreement pursuant to Section 2 of this Agreement, or if HCR terminates this Agreement pursuant to Section 19(a), (b), or (c) or provides a notice of non-renewal pursuant to Section 2 under circumstances in which HCR would be permitted to terminate the Agreement under Section 19(a), (b), or (c), then HCR shall have, and Agra does hereby grant, a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license to the Technology (including Further Developed Technology as described below) in the Field of Use, which shall include all rights to use, manufacture, have manufactured, commercialize, sell, offer to sell, and exploit the Technology, as well as the right to grant sublicenses of those rights to third parties to use or exploit the Technology to manufacture, sell, and/or lease products for HCR. Such a license shall be effective as of the expiration or termination of the Agreement.

(b) Trademark License. Agra grants HCR a non-exclusive, non-transferable, royalty-free right to use the trademark(s) as set forth on **Exhibit E** attached hereto and incorporated herein by reference (whether one or more, the "Trademarks") solely for the purpose of marketing the Products manufactured by Agra per this Agreement. Upon Agra's written request with reasonable notice, HCR shall provide Agra with a reasonable number of representative samples of HCR's usage of the Trademarks. Any and all use of the Trademarks, including, without limitation, all goodwill associated therewith or symbolized thereby, shall inure to the benefit of Agra or its licensors. The Trademarks shall at all times remain the exclusive property of Agra or its licensors and nothing in this Agreement shall be construed as granting or transferring to HCR any proprietary rights therein. HCR shall not use the

Trademarks in any manner whatsoever which may jeopardize the significance, distinctiveness or validity thereof or impair the value of the goodwill associated therewith. HCR shall comply with all instructions, usage guidelines, quality criteria and procedures that Agra may reasonably and in good faith prescribe from time to time for the use of the Trademarks. If HCR is not in compliance with the provisions of this Agreement with respect to the use of the Trademark, then upon notice from Agra, HCR shall promptly suspend use of the Trademark until the failure is remedied. Unless either Party terminates the Trademark License granted herein, HCR shall not challenge Agra's ownership of Trademarks or use or adopt any trademarks or logos that are the same as or may resemble or be confusingly similar to such Trademarks. Agra reserves all rights in and to any of its trademarks not expressly granted to HCR in this Agreement.

(c) [Reserved]

(d) Further Developed Technology. The Parties may jointly further develop the Technology pursuant to the work described in this Agreement, or Agra may further develop the Technology in the Field of Use ("**Further Developed Technology**"). Regardless of inventorship, as between the Parties, Agra shall own all right, title and interest in and to Further Developed Technology (excluding any improvements to any assets, equipment, or intellectual property of HCR or its affiliates, to which HCR shall own, and Agra hereby does assign, all right, title and interest it may acquire in such assets, equipment or intellectual property of HCR), including, but not limited to, all Further Developed Intellectual Property. For purposes of this Section 18(d), "**Further Developed Intellectual Property**" shall mean all rights, title, and interest in proprietary information, inventions, ideas, works of authorship, designs and derivative works arising from the development of the Further Developed Technology including without limitation, know-how; trade secrets; domestic and foreign patent applications; domestic and foreign patents; trademarks; copyrightable materials; research data; and software developed to use for the purpose of analyzing the data obtained by the Further Developed Technology. Further Developed Technology shall be included in the Technology and Trademark licenses set forth herein. Notwithstanding anything to the contrary, any technology Agra independently develops (without reference to the intellectual property or Confidential Information of HCR or its affiliates), and any technology HCR independently develops (without reference to the Technology or Confidential Information of Agra or its affiliates), shall not be considered Further Developed Technology and the other Party shall have no right to that technology under this Agreement.

(e) Assistance. HCR will provide commercially reasonable assistance required to consummate, record, and perfect intellectual property rights associated with the Technology, Trademarks, and the Further Developed Technology, including signing all papers and documents necessary to register or record documents with the United States Patent & Trademark Office, the United States Copyright Office, other state and federal agencies and all corresponding governmental authorities in all other countries, where applicable.

(f) Registrations and Rights. Agra has the exclusive right, but not an obligation, to prepare, file, prosecute, and maintain the Technology, Trademarks, and the Further

Developed Technology (excluding any improvements to any assets, equipment, or intellectual property of HCR or its affiliates) and will bear the related costs unless otherwise agreed in writing between the parties.

(g) Enforcement of Rights. As the owner of the Technology, Trademarks and Further Developed Technology, the right and determination to proceed with enforcement of any rights thereunder shall rest with Agra, at Agra's sole expense.

19. Early Termination.

(a) Termination Upon Default (Payment). In the event either Party hereto should default in the performance its duties and obligations of payment owed to the other Party hereunder, the non-defaulting Party may give written notice to the defaulting Party specifying the non-payment which is alleged as the basis of the default. If the defaulting Party does not correct or cure the noticed default within thirty (30) days after receipt of said written notice, this Agreement may be terminated by the non-defaulting Party by the giving of another notice to the defaulting Party. Such termination shall be effective upon receipt by the defaulting Party of said notice of termination.

(b) Termination Upon Default. In the event either Party hereto should default in the performance of any of its duties and obligations hereunder, the non-defaulting Party may give notice to the defaulting Party specifying the term or condition which is alleged as the basis of the default. If the defaulting Party does not correct or cure the noticed default within thirty (30) days after receipt of said notice, this Agreement may be terminated by the non-defaulting Party by the giving of another notice to the defaulting Party. Such termination shall be effective upon receipt by the defaulting Party of said notice of termination.

(c) Termination Upon Insolvency. In the event either Party files a voluntary petition in bankruptcy, has filed against it an involuntary petition in bankruptcy, makes an assignment for the benefit of creditors, has a trustee or receiver appointed for any or all of its assets, is insolvent or fails, or is unable to pay its debts when due, then the other Party may immediately terminate this Agreement by the giving of notice of termination. Such termination shall be effective on the date the notice is deemed to be received pursuant this Agreement below.

(d) Effect of Termination Upon Outstanding Purchase Orders. Notwithstanding the termination of this Agreement, all Purchase Orders prior to the effective date of the termination of this Agreement shall survive the termination of this Agreement. The Parties shall treat the applicable provisions of this Agreement as extended for such period of time as is necessary to complete such manufacture of the Products (and payment therefor) under any such Purchase Orders pending at the effective date of termination.

(e) Effect of Termination Upon Rights Under Section 18. Notwithstanding the termination of this Agreement: (1) HCR's right to offer for sale and to sell inventory as described in Section 18(a)(2) of this Agreement shall survive any expiration and/or termination of this Agreement for the duration of such ninety (90) day period; and (2) any licenses of

Technology (including Further Developed Technology) granted to HCR pursuant to Section 18(a)(5) or (a)(6) of this Agreement shall survive any expiration and/or termination of this Agreement.

(f) No Limitations. The right of either Party to terminate this Agreement as set forth above is in addition to and not in exhaustion of such other rights and remedies as may be available under this Agreement or, except as may be limited by this Agreement, in law or equity to such Party because of the other Party's failure to fulfill, perform, or observe the terms, conditions, or covenants of this Agreement.

20. Non-Disclosure Agreement. The Parties acknowledge the terms and conditions of the Mutual Nondisclosure Agreement dated May 17, 2019, by and between Hi-Crush Holdings, LLC and Agra (the "**Nondisclosure Agreement**") are hereby expressly superseded and replaced by this Agreement; provided, however, that the terms of the Nondisclosure Agreement shall govern the parties thereto from May 17, 2019 to the Effective Date. As the Nondisclosure Agreement was by its terms for the express purpose of evaluating a "Proposed Transaction" as defined therein and this Agreement covers the execution of such Proposed Transaction, the Parties hereby agree as follows from and after the Effective Date:

(a) Nondisclosure. All of the terms and conditions of the Nondisclosure Agreement are hereby incorporated herein as if fully set forth here except as follows: (i) any reference to "Hi-Crush" in the Nondisclosure Agreement terms shall be replaced in this Agreement with HCR; (ii) the provisions of such Nondisclosure Agreement which refer to the purpose thereof being related to evaluating a "Proposed Transaction" shall not affect or limit any confidentiality rights or obligations of the parties, each of which shall fully apply to this Agreement whether or not in the evaluation of a "Proposed Transaction"; and (iii) the duration of such terms and conditions as incorporated into this Agreement shall continue for the entire Term of this Agreement and for two (2) years thereafter, except that all such terms and conditions as incorporated herein shall continue in effect with respect to any Confidential Information which constitutes a "trade secret" under applicable law for so long as the same shall remain a trade secret.

(b) Survival. The provisions of this Section shall expressly survive expiration or termination of this Agreement for any reason.

21. Warranties, Disclaimers, and Remedies. The Parties agree that the provisions of Terms and Conditions of Sale included in Agra's Invoice are expressly made a part of this Agreement as to all warranties, exclusive remedies for breach of warranty, disclaimers, and limitations described therein. Any reference to the term "HCR" (or "Customer" or a similar term) in the Terms and Conditions of Sale shall refer to HCR and "Agra" shall mean "Agra." HCR acknowledges it has had an opportunity to review these Terms and Conditions of Sale prior to the execution of this Agreement.

22. Order of Precedence for Documents. In the event of any conflict, the order of precedence of the applicable terms shall be (from highest precedence to lowest precedence) (a)

the provisions of this Agreement, (b) the terms and conditions of sale as set forth in Agra's Invoice (the "**Terms and Conditions of Sale**"), and (c) the terms and conditions of purchase as set forth in HCR's Purchase Order.

23. Mutual Indemnification. Subject to the terms and conditions of this Agreement, each Party (as "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party and its officers, directors, managers, members, general partners, limited partners, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable and documented attorneys' fees, incurred by Indemnified Party (collectively, "**Losses**"), arising out or resulting from any third-party claim or proceeding alleging: (a) the negligence or willful misconduct of the Indemnifying Party, its agents, employees, contractors or subcontractors; (b) any failure by Indemnifying Party or its agents, employees, contractors or subcontractors to comply with any applicable laws, regulations or legal requirements; or (c) a breach or non-fulfillment of any provision of this Agreement by the Indemnifying Party or its agents, employees, contractors or subcontractors.

24. Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, an Indemnifying Party is not obligated to indemnify, defend or hold harmless an Indemnified Party against any claim or proceeding or any corresponding Losses to the extent they arise out of or result from any Indemnified Party's (or that of its agents, employees, contractors or subcontractors) negligence or willful misconduct or breach or nonfulfillment of any provision of this Agreement. The sole and exclusive basis and applicable terms for indemnification between the parties shall be as expressly set forth in this Agreement.

25. Certain Limitations. IN NO EVENT SHALL EITHER PARTY BE LIABLE HEREUNDER FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

26. Insurance.

(a) Insurance of Agra. Agra shall purchase and maintain commercial general liability (including product liability coverage) at all times during the performance of this Agreement. Such insurance shall be placed with financially sound and reputable insurers licensed to transact business in all relevant jurisdictions. Such commercial general liability shall have combined single limits of at least \$2,000,000.00. Agra shall, upon commencement of this Agreement and upon request at all reasonable times thereafter, provide HCR with a certificate of insurance with regard to such insurance. HCR shall be named as an additional insured on all



such policy or policies of commercial general liability insurance maintained or required to be maintained by Agra under this Agreement.

(b) Insurance of HCR. HCR shall purchase and maintain commercial general liability (including product liability coverage) at all times during the performance of this Agreement. Such insurance shall be placed with financially sound and reputable insurers licensed to transact business in all relevant jurisdictions. Such commercial general liability shall have combined single limits of at least \$2,000,000.00. HCR shall, upon commencement of this Agreement and upon request at all reasonable times thereafter, provide Agra with a certificate of insurance with regard to such insurance. Agra shall be named as an additional insured on all such policy or policies of commercial general liability insurance maintained or required to be maintained by HCR under this Agreement.

27. Force Majeure. Neither Party shall not be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (other than a payment obligation), if such failure or delay is caused by or results from acts beyond such Party's control, including: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) actions, embargoes or blockades in effect on or after the Effective Date; (e) national or regional emergency; (f) strikes, labor stoppages or slowdowns or other industrial disturbances; (g) shortages or delays in receiving nationwide raw materials; or (h) shortage of adequate power facilities.

28. Notices. Any notice required or permitted under this Agreement shall be in writing and delivered personally, sent by prepaid first class U.S. mail, by electronic mail or by overnight courier, duly addressed as follows:

To Agra:       Agra Industries, Inc.  
                  Attn: Pat Hinner, President  
                  1211 West Water Street  
                  Merrill, WI 54452  
                  [phinner@agraind.com](mailto:phinner@agraind.com)  
                  (with copy if by e-mail to [ehinner@agraind.com](mailto:ehinner@agraind.com))

HCR:           Hi-Crush Inc.  
                  Attn: General Counsel  
                  1330 Post Oak Blvd.  
                  Suite 600  
                  Houston, TX 77056  
                  [Legal@hicrush.com](mailto:Legal@hicrush.com)

or to such other address as either Party may hereafter furnish in writing to the other Party. Notice served by mail shall be deemed to be received two (2) days after the date on which notice is deposited in the prepaid first class U.S. mail. Notice served by overnight courier shall be

deemed to be received one (1) day after the date on which the notice is deposited with the overnight courier. Notice served by electronic mail shall be deemed received (a) upon actual receipt, if received by recipient during its normal business hours, or (b) at 9:00 a.m. CST on the next business day, if received by recipient after its normal business hours.

29. Independent Contractors. Agra and HCR shall be deemed to be independent contractors, and nothing contained herein nor in the conduct of either Party shall be construed as establishing any partnership, agency relationship, or joint venture between the parties hereto. Neither Party is hereby authorized to act as an agent of the other for any purposes whatsoever except as may be otherwise expressly provided herein.

30. Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements between the Parties with respect to the subject matter of this Agreement. There are no understandings, representations, or warranties of any kind, express or implied, not expressly set forth in this Agreement. No modification of this Agreement shall be effective unless in writing and signed by both parties.

31. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Texas without regard to conflicts of laws principles. The Parties hereby agree that any legal action deemed necessary by either Party to this Agreement shall be brought in any state or federal court located in Harris County, Texas, and Agra and HCR hereby consent to the personal jurisdiction of either such courts in any such action over the Parties hereto. THIS PROVISION SPECIFICALLY EXCLUDES VENUE AND JURISDICTION IN ANY OTHER STATE OR FEDERAL COURT.

32. Waiver. The failure of either Party at any time to enforce any provision of this Agreement, to exercise its rights under any provision hereof, or to require a certain performance of any provision hereof, shall in no way be construed as a waiver of such provision, nor in any way affect the validity of this Agreement or the right of such Party thereafter to enforce each and every provision hereof.

33. Severability. If any provision of this Agreement shall be held unenforceable or invalid, the remaining provisions shall remain in full force and effect.

34. Assignment. Neither Party shall assign any of its rights or obligations under this Agreement, except to a subsidiary, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

35. Headings. The headings appearing in this Agreement have been inserted for the purposes of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the provisions to which they apply.

36. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears

thereon, and all of which shall together constitute one and the same instrument. Executed signature pages for this Agreement may be delivered by facsimile transmission or via the internet in .pdf or similar format. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signature of all of the parties reflected hereon as the signatories.

37. Construction. The parties agree that this Agreement shall not be construed or enforced with any presumption against the Party deemed to have drafted it, notwithstanding any local practice, custom, or caselaw in any applicable jurisdiction which may dictate otherwise.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to become effective as of the Effective Date by signing below.

AGRA INDUSTRIES, INC.

By:   
Pat Hinner, President

HI-CRUSH INC.

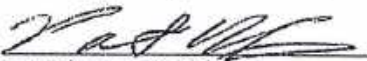
By: \_\_\_\_\_  
\_\_\_\_\_ as its \_\_\_\_\_

thereon, and all of which shall together constitute one and the same instrument. Executed signature pages for this Agreement may be delivered by facsimile transmission or via the internet in .pdf or similar format. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signature of all of the parties reflected hereon as the signatories.


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AGRA INDUSTRIES, INC.

By:   
Pat Hinner, President

HI-CRUSH INC.

By:   
Robert E. Rasmus as its Chief Executive Officer

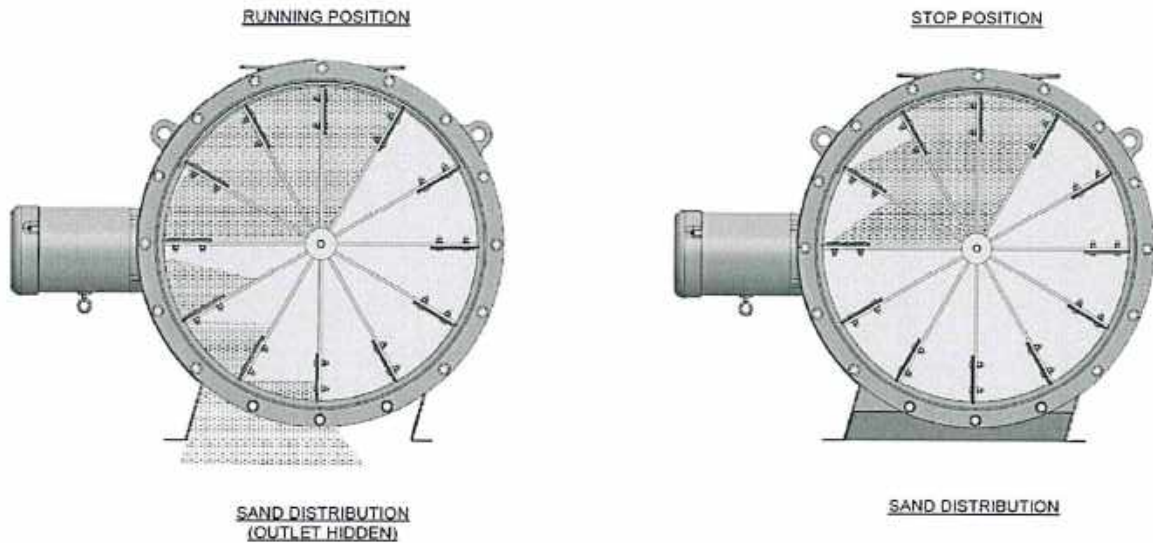
## EXHIBIT A

### Technology

The Technology includes all intellectual property (including but not limited to proprietary information, inventions (whether patentable or unpatentable), ideas, works of authorship, designs, derivative works, know-how, trade secrets, copyrightable material; research data, and software) authored, developed, created, or owned by Agra that is embodied in or used by the Products as reflected in Exhibit B, and any improvements thereto. For avoidance of doubt, the Technology shall include, but shall not be limited to, any intellectual property created, or patents or patent applications filed, by Agra in connection with the Technology either before or after the Effective Date.

## EXHIBIT B

### Products



The Product is a rotating paddle wheel inside of a drum with an inlet and outlet sized to measure a determined amount of material.

The wheel rotates in the drum at a revolution needed to maintain the required amount of product.

The size of product and speed that is run can vary depending upon the amount of material flow that is required.

EXHIBIT C

Purchase Price

The Purchase Price per unit of Product is equal to Twenty Thousand Six Hundred Ten and No/100ths (\$20,610.00). Payment terms shall include 34% upon Purchase Order acceptance, 33% upon shipping of Product, and 33% due thirty (30) days after delivery of the Product.

The Purchase Price shall be adjusted annually as described in this Exhibit C.

Adjustments to Purchase Price

Beginning on December 1, 2019 and each December 1 during the Term thereafter, the Purchase Price shall be adjusted as follows:

1. First, the Purchase Price shall be increased by 3%; and
2. Second, after accounting for the 3% increase above, the Purchase Price shall be further adjusted by multiplying such Purchase Price by an adjustment factor (the “**Adjustment Factor**”), computed as described below, to determine the adjusted Purchase Price to be paid per unit by Hi-Crush for Products purchased until the next December 1 such adjustments, that is:

$$\text{Purchase Price (as increased by 3\% on December 1)} \times \text{Adjustment Factor} = \text{adjusted Purchase Price until next December 1 adjustment date}$$

The Adjustment Factor to be used in determining the adjusted Purchase Price shall be the value of the percentage changes in the cost factors designated below from the base value below to their value for the month of September preceding each December 1 adjustment date, as described in the following table:

COST FACTOR	SOURCE	BASE VALUE December 2018
Commodity for Metals and Metal Products: Iron and Steel (WPU101)	U.S. Bureau of Labor and Statistics	244.5

## EXHIBIT D

### Specifications

Product materials as follows:

- Steel: Carbon Steel
- Paint: AGRA Standard Enamel
- Drive: Right Angle Reducer C-Face Drive Class II
- Motor: PART NUMBER: 400-6064; 7.5HP TEFC 3PH 1800 213TC
- Wheel Seal: EPDM Rubber
- Fasteners: Carbon Steel Zinc
- Shaft: 1045 CR (Cold Rolled Steel)



EXHIBIT E

Trademarks

Word Mark: FRAC FEEDER  
FRAC FEEDER BY AGRA

Design Mark:

