

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AGRIFY CORPORATION
(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of
incorporation or organization)

8742

(Primary standard industrial
classification code number)

30-0943453

(I.R.S. employer
identification number)

**101 Middlesex Turnpike
Suite 6, PMB 326
Burlington, MA 01803
(617) 896-5243**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Raymond Chang, Chief Executive Officer
Agrify Corporation
101 Middlesex Turnpike
Suite 6, PMB 326
Burlington, MA 01803
(617) 896-5243**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Mitchell S. Nussbaum, Esq.
David J. Levine, Esq.
Loeb & Loeb LLP
345 Park Avenue
New York, NY 10154
Tel: (212) 407-4000
Fax: (212) 937-3943**

**Barry I. Grossman, Esq.
Lawrence A. Rosenbloom, Esq.
Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas, 11th Floor
New York, NY 10105
Tel: (212) 370-1300
Fax: (212) 370-7889**

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. Registration No. 333-251616

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Security Being Registered⁽¹⁾	Proposed Maximum Aggregate Offering Price⁽²⁾⁽³⁾	Amount of Registration Fee
Common stock, \$0.001 par value	\$ 10,350,000 ⁽⁴⁾	\$ 1,129.19
Representative's warrants to purchase common stock	—	— ⁽⁵⁾
Common stock underlying Representative's warrants	\$ 569,250 ⁽⁶⁾	\$ 62.11
Total	\$ 10,919,250	\$ 1,191.29

- (1) The registrant previously registered shares of its common stock with a maximum aggregate offering price not to exceed \$54,596,250 on a Registration Statement on Form S-1 (File No. 333-251616), which was declared effective by the Securities and Exchange Commission on January 27, 2021. In accordance with Rule 462(b) under the Securities Act, an additional amount of securities having a proposed maximum aggregate offering price of \$10,919,250 are hereby registered.
- (2) Represents only the additional proposed aggregate offering price of common stock being registered. Does not include the securities that the registrant previously registered on the Registration Statement on Form S-1 (Registration No. 333-251616).
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
- (4) Includes an additional \$1,350,000 aggregate offering price of common stock issuable upon exercise of a 45-day option granted to the underwriters to cover over-allotments, if any.
- (5) In accordance with Rule 457(g) under the Securities Act, because the shares of the registrant's common stock underlying the Representative's warrants are registered hereby, no separate registration fee is required with respect to the warrants registered hereby.
- (6) Represents only the additional proposed aggregate offering price of Representative's warrants.

This Registration Statement shall become effective upon filing with the Securities and Exchange Commission in accordance with Rule 462(b) under the Securities Act.

EXPLANATORY NOTE AND INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

This Registration Statement on Form S-1 (this “Registration Statement”) is being filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, for the sole purpose of increasing the aggregate offering price of common stock offered by Agrify Corporation (the “Registrant”) by \$10,919,250, which includes (a) \$1,350,000 subject to purchase upon exercise of the underwriters’ option to purchase additional shares of the Registrant’s common stock to cover over-allotments, if any, and (b) \$569,250 subject to additional shares of the Registrant’s common stock underlying Representative’s warrants. The additional securities that are being registered for sale are in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price set forth in the Calculation of Registration Fee table contained in the Registration Statement on Form S-1, as amended (File No. 333-251616) (the “Prior Registration Statement”), which was declared effective by the Securities and Exchange Commission on January 27, 2021. The information set forth in the Prior Registration Statement and all exhibits thereto are hereby incorporated by reference in this filing.

The required opinion and consents are listed on the Exhibit Index attached hereto and filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-1 and has duly caused this registration statement or amendment thereto to be signed on its behalf by the undersigned, thereunto duly authorized, in Burlington, Massachusetts, on January 27, 2021.

AGRIFY CORPORATION

By: /s/ Raymond Chang
Name: Raymond Chang
Title: Chief Executive Officer
(principal executive officer)

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities held on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Raymond Chang</u> Raymond Chang	Chief Executive Officer and Director (principal executive officer)	January 27, 2021
<u>/s/ Niv Krikov</u> Niv Krikov	Chief Financial Officer (principal financial and accounting officer)	January 27, 2021
<u>* /s/ Thomas Massie</u> Thomas Massie	Director	January 27, 2021
<u>* /s/ Guichao Hua</u> Guichao Hua	Director	January 27, 2021
<u>* /s/ Krishnan Varier</u> Krishnan Varier	Director	January 27, 2021
<u>* /s/ Timothy Oakes</u> Timothy Oakes	Director	January 27, 2021
<u>* /s/ Timothy Mahoney</u> Timothy Mahoney	Director	January 27, 2021
<u>* /s/ Matthew Kressy</u> Matthew Kressy	Director	January 27, 2021
<u>*By: /s/ Niv Krikov</u> Niv Krikov Attorney-in-fact		

EXHIBIT INDEX

Exhibit No.	Description
5.1	Opinion of Loeb & Loeb LLP
23.1	Consent of Marcum LLP
23.2	Consent of Loeb & Loeb LLP (included in Exhibit 5.1)
24.1	Power of Attorney (incorporated by reference to the Registration Statement on Form S-1, File No. 333-251616, which was originally filed with the Securities and Exchange Commission on December 22, 2020)



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January 27, 2021

Agrify Corporation
101 Middlesex Turnpike
Suite 6, PMB 326
Burlington, MA 01803

Re: Agrify Corporation

Ladies and Gentlemen:

We have acted as counsel to Agrify Corporation, a Nevada corporation (the "Company"), in connection with the Registration Statement on Form S-1 (File No. 333-251616), as amended (the "Initial Registration Statement"), and a registration statement relating to the Initial Registration Statement filed pursuant to Rule 462(b) promulgated under the Securities Act of 1933, as amended (the "Securities Act") (the "Additional Registration Statement" and, together with the Initial Registration Statement, the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act.

The Registration Statement relates to the proposed underwritten initial public offering and sale by the Company of (i) up to \$54,000,000 aggregate public offering price of a number of shares (the "Shares") of the Company's common stock, par value \$0.001 per share ("Common Stock"), including up to an additional \$8,100,000 of a number of shares of Common Stock issuable upon exercise of the underwriter over-allotment option (the "Over-Allotment Shares"), (ii) representative warrants to purchase up to \$3,415,500 of a number of shares of Common Stock equal to five percent (5%) of the number of shares of Common Stock sold pursuant to the Registration Statement, including shares issued pursuant to the exercise of the over-allotment option, substantially in the form filed as an exhibit to the Registration Statement (the "Representative Warrants"), and (iii) up to \$3,415,000 of shares of Common Stock issuable upon exercise of the Representative Warrants (the "Warrant Shares"). The Shares, the Over-Allotment Shares, the Representative Warrants and the Warrant Shares shall be referred to herein as the "Securities." We understand that (a) the Shares are proposed to be sold for sale to the public and (b) the Representative Warrants are proposed to be issued to the representative of the underwriters (or its permitted assignees), as described in the Registration Statement and pursuant to an underwriting agreement, substantially in the form filed as an exhibit to the Registration Statement, to be entered into by the Company and the representative (the "Underwriting Agreement").

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such corporate records of the Company and other certificates and documents of officials of the Company, public officials and others as we have deemed appropriate for purposes of this letter. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to authentic original documents of all copies submitted to us as conformed and certified or reproduced copies.

Based upon the foregoing and subject to the assumptions, exceptions, qualifications and limitations set forth hereinafter, we are of the opinion that:

1. The Shares and the Over-Allotment Shares have been duly authorized and, when issued, delivered and paid for in accordance with the terms of the Underwriting Agreement, will be validly issued, fully paid and non-assessable.
2. The Representative Warrants have been duly authorized by the Company and, when executed by the Company and delivered to the purchasers thereof against payment therefor in accordance with the terms of the Underwriting Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.
3. The Warrant Shares have been duly authorized, and if, as, and when the Warrant Shares are issued and delivered by the Company upon exercise of the Representative Warrants in accordance with the terms thereof, including, without limitation, the payment in full of applicable consideration, the Warrant Shares will be validly issued, fully paid and non-assessable.

The opinion we express in paragraph 2, above, is based upon a review only of those laws, statutes, rules, ordinances and regulations which, in our experience, a securities lawyer who is a member of the bar of the State of New York and practicing before the Commission exercising customary professional diligence would reasonably recognize as being applicable to the foregoing transactions.

The opinion set forth in paragraph 2, above, is subject to (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws) and (ii) the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless whether considered in a proceeding in equity or at law.

We express no opinion as to the enforceability of (i) provisions that relate to choice of law, forum selection or submission to jurisdiction (including, without limitation, any express or implied waiver of any objection to venue in any court or of any objection that a court is an inconvenient forum) to the extent that the validity, binding effect or enforceability of any such provision is to be determined by any court other than a state court of the State of New York or (ii) waivers by the Company of any statutory or constitutional rights or remedies. We draw your attention to the fact that, under certain circumstances, the enforceability of terms to the effect that provisions may not be waived or modified except in writing may be limited.

In rendering the foregoing opinions, we have assumed that: (i) the Registration Statement, and any amendments thereto, shall have become effective under the Securities Act and will remain effective at the time of issuance of the Shares, the Over-Allotment Shares and the Warrant Shares thereunder; (ii) the Company will issue and deliver the Securities in the manner contemplated by the final prospectus; and (iii) all Securities will be issued in compliance with applicable federal and state securities laws.

The opinions we express herein are limited to matters involving the internal laws of the State of New York and applicable statutory provisions of the Nevada Private Corporations Chapter of the Nevada Revised Statutes, Nev. Rev. Stat. 78, including interpretations thereof in published decisions of the Nevada courts, and applicable provisions of the Nevada Constitution. We express no opinion with respect to any other laws.

We are furnishing this opinion in connection with the filing of the Registration Statement, and this opinion is not to be relied upon for any other purpose without our prior written consent. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to our firm under the heading, "Legal Matters," in the prospectus constituting part of the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Loeb & Loeb LLP
Loeb & Loeb LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the inclusion in this Registration Statement of Agrify Corporation on Form S-1 (File No. 333-) of our report dated March 19, 2020 (except for Note 13, as to which is dated January 12, 2021), which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Agrify Corporation and Subsidiary as of December 31, 2019 and December 31, 2018 and for the two years in the period ended December 31, 2019, which report appears in the Prospectus, which is part of this Registration Statement. We also consent to the reference to our Firm under the heading "Experts" in such Prospectus.

/s/ Marcum LLP

Marcum LLP
Melville, NY
January 27, 2021