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15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF NEVADA**

17 CH2E NEVADA, LLC, a Nevada limited  
18 liability company, )  
19 Plaintiff, )  
20 v. )  
21 LATIF MAHJOOB, an individual; AMERICAN )  
COMBUSTION TECHNOLOGY )  
22 INCORPORATED, a California corporation; )  
DOES 1-X; and ROE COMPANIES XI-XX, )  
23 inclusive, )  
24 Defendants. )  
25

Case No. 2:15-cv-00694-JCM-NJK

**CH2E’S MOTION TO COMPEL  
AMERICAN COMBUSTION  
TECHNOLOGY INC. TO PRODUCE  
REQUESTED DOCUMENTS**

26 Plaintiff CH2E Nevada, LLC (“CH2E”), by and through undersigned counsel, BALLARD  
27 SPAHR LLP, hereby moves the Court for entry of an Order compelling Defendant American  
28 Combustion Technology, Inc. (“ACTI”) to produce the documents requested in Request

1 Numbers 31, 32 and 33 of CH2E’s Second Set of Document Requests to Defendant ACTI (the  
2 “Requests”), as well as an award of attorneys’ fees and costs pursuant to Federal Rule of Civil  
3 Procedure 37(a)(5)(A).

#### 4 CERTIFICATION OF CONFERRAL

5  
6 In accordance with Federal Rule of Civil Procedure 37(a)(2)(B) and LR 26-7(b), counsel  
7 for CH2E certifies that counsel for CH2E has made numerous good faith attempts to resolve the  
8 discovery dispute giving rise to this Motion through telephonic, email and letter conferrals. As  
9 explained in the Declaration of Gregory P. Szewczyk (the “Szewczyk Dec.”) and herein, despite  
10 CH2E’s efforts, ACTI will not produce the requested documents in accordance with the  
11 Stipulated Protective Order it asked this Court to enter.

#### 12 MEMORANDUM OF POINTS AND AUTHORITIES

13 At its core, this case is about whether certain high-tech equipment sold by ACTI to CH2E  
14 could operate at the levels expressly promised both before the parties entered into the purchase  
15 agreement and in the agreement itself. Defendants have made clear that the promised and  
16 warranted operational levels are based on Defendants’ experience with a related “pilot unit.”

17 Nonetheless, ACTI is refusing to produce the complete and detailed design drawings for  
18 both the equipment sold to CH2E and the related equipment which served as the basis for  
19 Defendants’ promises and contractual warranties. The stated reason for ACTI’s refusal to  
20 produce documents which are central to this case is that ACTI believes that if it produced the  
21 drawings, CH2E will use them for improper business purposes.

22 ACTI’s refusal to produce these clearly relevant documents is particularly shocking  
23 because, months ago, ACTI asked this Court to enter the governing Stipulated Protective Order  
24 [ECF No. 26] so that ACTI could produce the exact documents that are at issue now. Indeed, the  
25 Stipulated Protective Order expressly provides that:

26 The parties shall use Confidential Discovery Material, and any information  
27 derived from it, solely for the purposes of this case. ***They shall not use it for any  
28 other purpose, including, without limitation, any business or commercial  
purpose,*** or in connection with any other proceeding or litigation.

1 [ECF No. 26 at 2 (emphasis added)]. Thus, there can be no reasonable concerns regarding the  
2 treatment of any purportedly proprietary business information.

3 Simply put, ACTI lacks any good faith basis for withholding the complete and detailed  
4 design drawings of the equipment sold to CH2E and the related equipment which served as the  
5 basis of ACTI's promises. Thus, ACTI's refusal to produce these central documents can only be  
6 seen as an attempt to hide evidence that will conclusively prove that CH2E's claims are  
7 meritorious.

8 CH2E has attempted for months to resolve these uncontroversial discovery issues without  
9 involving the Court. However, after numerous telephonic, email and letter conferrals, CH2E has  
10 no choice but to file this Motion.

11 CH2E respectfully requests that the Court grant this Motion and order ACTI to: (i)  
12 produce all documents responsive to Request Nos. 31, 32 and 33; (ii) produce all admittedly  
13 relevant documents that ACTI promised to produce; and (iii) provide a privilege log. CH2E  
14 further requests that, pursuant to Federal Rule of Civil Procedure 37, the Court award CH2E the  
15 reasonable attorneys' fees and costs incurred in bringing this Motion.

### 16 FACTUAL SUMMARY

#### 17 **A. CH2E Enters into the Agreement Based on Defendants' Promises that ACTI 18 Can Scale Up the Pilot Unit, and, After the Equipment Fails to Operate as 19 Promised, CH2E Files Suit.**

20 This case arises out of Defendants' fraudulent inducement of CH2E—an innovative  
21 Nevada company that converts discarded tires into recycled energy—to purchase from ACTI two  
22 high-tech processor systems (the "Equipment") which, now known to a mathematical certainty,  
23 could never have performed at the levels promised by ACTI.

24 ACTI perpetrated this fraud by performing demonstrations on a small pilot unit (the  
25 "Pilot Unit"), which could process approximately 250 pounds of feedstock per hour. ACTI  
26 assured CH2E, both verbally and in published marketing materials, that ACTI's equipment was  
27 "scalable." Specifically, ACTI's founder and President Latif Mahjoob promised CH2E that  
28 ACTI could scale up the Pilot Unit and build two units that could each process 3.125 tons of

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1 feedstock per hour, 24 hours per day. Based on Defendants’ promise and the Pilot Unit  
 2 demonstrations, as well as Mahjoob’s claims of having “more information on tires than anybody  
 3 on the surface of Earth,” CH2E entered into the Purchase Agreement dated August 30, 2012 (the  
 4 “Agreement”).

5 The Agreement expressly provides that ACTI would provide to CH2E “detailed  
 6 equipment and arrangement drawings.” Ex. A (Agreement) at CH2E-0176317, CH2E-0176320.

7 The Agreement also expressly provides that the Equipment can process 3.125 tons of  
 8 tires per hour, 24 hours per day. *Id.* at CH2E-0176315. The Agreement explains that “[ACTI]  
 9 has empirically established what [ACTI] believes are predictable, replicable system efficiencies.  
 10 Based on these efficiencies, [ACTI] believes that the figures accurately depict the expected  
 11 throughput results from the feedstock [CH2E] intends to process with the Equipment being  
 12 purchased.” *Id.* at CH2E-0176322.

13 Notwithstanding ACTI’s numerous express representations, the Equipment never  
 14 functioned as promised. Further, despite repeated requests by CH2E, ACTI never delivered to  
 15 CH2E complete and detailed design drawings of the Equipment. Eventually, on March 19, 2015,  
 16 CH2E had no choice but to initiate this action asserting claims against Defendants Mahjoob and  
 17 ACTI for fraudulent inducement and against ACTI for breach of contract.

18 **B. ACTI Asks the Court to Enter the Stipulated Protective Order So that It Can**  
 19 **Produce the Design Drawings in Response to CH2E’s First Requests.**

20 On July 16, 2015, CH2E served ACTI with Plaintiff’s First Set of Document Requests  
 21 (the “First Requests”). The First Requests included requests for documents such as: (1) “[a]ll  
 22 blueprints, drawings . . . relating to the Equipment or the design of the Equipment, including all  
 23 drafts”; (2) [a]ll Documents relating to ACTI’s Pre-Agreement expectations or beliefs relating to  
 24 the Throughput of the Equipment”; (3) “[a]ll Documents relating to the design of Other  
 25 Equipment upon which ACTI relied in performing the empirical analysis referenced in Section  
 26 11.1.13 of Exhibit A to the Agreement”; and (4) “[a]ll Documents relating to the results of the  
 27 empirical analysis referenced in Section 11.1.13 of Exhibit A to the Agreement.” Ex. B (First  
 28 Requests) at Nos. 4, 8, 11 and 13.

1 On September 16, 2015, ACTI objected to the First Requests quoted above on the  
 2 grounds that the documents requested purportedly contained proprietary business information,  
 3 but stated that ACTI would produce the documents “[s]ubject to an appropriate protective order.”  
 4 Ex. C (ACTI Resp. to First Req.) at Nos. 4, 8, 11 and 13.

5 CH2E and ACTI thereafter negotiated a mutually-agreed to protective order, which was  
 6 submitted to the Court as a stipulation on October 5, 2015. On October 6, 2015, the Court  
 7 entered the Stipulated Protective Order with certain modifications [ECF No. 26] (the “Stipulated  
 8 Protective Order”). The Court expressly explained that it “approved the blanket protective order  
 9 to facilitate discovery exchanges.” [ECF No. 27 at 2].

10 The Stipulated Protective Order provides that “[s]ome of the information the parties may  
 11 seek, exchange or develop through discovery in this case may contain . . . information that the  
 12 party producing . . . the information will claim is confidential and entitled to protection under  
 13 Federal Rule of Civil Procedure 26(c).” Ex. D (Stip. Prot. Order) at 1. Accordingly, the  
 14 Stipulated Protective Order requires that:

15 The parties shall use Confidential Discovery Material, and any information  
 16 derived from it, solely for the purposes of this case. ***They shall not use it for any  
 17 other purpose, including, without limitation, any business or commercial  
 purpose,*** or in connection with any other proceeding or litigation.

18 *Id.* at 2 (emphasis added). The Stipulated Protective Order further provides that Confidential  
 19 Discovery Material may only be disclosed to the Court, named parties and counsel, experts or  
 20 consultants retained by the parties or counsel, deposition witnesses, and the author or recipient of  
 21 the Confidential Discovery Material, and only to the extent reasonably necessary to assist  
 22 counsel in the prosecution or defense of this case. *Id.* at 4-5.

23 Notwithstanding the fact that Defendants agreed to the terms of the Stipulated Protective  
 24 Order—which was negotiated specifically so Defendants could produce the withheld  
 25 documents—Defendants did not make a supplemental production.

26 **C. Mahjoob Admits at His Deposition that ACTI Did Not Produce Crucial**  
 27 **Design Documents Even Though the Documents Are Readily Available.**

28 On November 4, 2015, CH2E took the deposition of Mahjoob in his individual capacity.

1 At his deposition, Mahjoob admitted that he personally performed detailed calculations and  
 2 created detailed design drawings for the Equipment. Ex. E (Mahjoob Tr.) at 188:10-189:17.  
 3 Mahjoob also admitted that these calculations and design drawings are easily available on  
 4 ACTI's office computers. *Id.*

5 Nonetheless, Mahjoob testified that ACTI did not provide these calculations and  
 6 drawings to CH2E in accordance with the Agreement, or during litigation as part of ACTI's  
 7 initial disclosures or in response to the First Requests:

8 **Q. The design drawings you also have?**

9 A. Yes.

10 **Q. But you didn't give those to CH2E?**

11 A. No. Those are ours.

12 *Id.* at 238:24-239:2; *see also id.* at 190:3-7, 194:11-16, 195:18-23, 236:16-20, 237:22-238:1.

13 Mahjoob testified that the empirical warranty in the Agreement was based on results from  
 14 the Pilot Unit. *Id.* at 248:21-25. Mahjoob also testified that the Pilot Unit "is sort of a scaled-  
 15 down smaller version of the big pyrolysis unit." *Id.* at 80:7-9; *see also id.* at 182:23-24. Further,  
 16 Mahjoob admitted that ACTI induced CH2E to enter into the Agreement through demonstrations  
 17 on the Pilot Unit and that the Pilot Unit was featured in ACTI's marketing materials. *Id.* at  
 18 77:16-20; 78:14-16; 141:22-142:1, 142:16-24.

19 When asked directly about ACTI's failure to produce relevant design drawings, Mahjoob  
 20 stated that design drawings are "proprietary," but that he "would be more than happy" to produce  
 21 the design drawings if there was an "appropriate protective order in this case" that "make[s] sure  
 22 that it doesn't go anywhere." *Id.* at 188:23-189:1, 189:18-20.

23 Nonetheless, Defendants did not produce the design drawings for either the Equipment or  
 24 the Pilot Unit after Mahjoob's deposition.

25 **D. Defendants Again Wrongfully Refuse to Produce Design Drawings in  
 26 Response to the Requests at Issue.**

27 Between December 2015 and March 2016, the parties agreed to refrain from actively  
 28 seeking discovery in light of ongoing settlement discussions and health issues of counsel.

On April 4, 2016, CH2E served the Requests. The Requests again sought the design

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1 drawings for the Equipment and the Pilot Unit, including specific references to the portions of  
2 Mahjoob's testimony that described the existence and location of these documents. *See* Ex. F.

3 On May 18, 2016, Defendant served its Responses to the Requests (the "Responses").  
4 *See* Ex. G. As required under LR 26-7(a), the Requests currently at issue, along with ACTI's  
5 deficient Responses, are as follows:

6 **REQUEST NO. 31**

7 All calculations, designs, drawings, schematics and other Documents relating to  
8 the design of the Equipment described in the Mahjoob Transcript at 188:10-  
189:20 and 236:21-237:4.

9 **RESPONSE TO REQUEST NO. 31**

10 Defendant objects to this Request on the basis that it seeks information that is  
confidential, proprietary, and trade secret.

11 Subject to and without waiver of the foregoing objections, Defendant responds as  
12 follows: Defendant will produce relevant drawings related to the Equipment with  
13 the exception that it will not produce proprietary design drawings that would  
enable CH2E copy Defendant's technologies and systems.

14 **REQUEST NO. 32**

15 All calculations, designs, drawings, schematics and other Documents relating to  
16 the design of the Pilot Unit.

17 **RESPONSE TO REQUEST NO. 32**

18 Defendant objects to this Request on the grounds that it seeks information that is  
19 neither relevant to the subject matter of this action nor reasonably calculated to  
lead to the discovery of admissible evidence. Defendant objects to this Request on  
20 the basis that it seeks information that is confidential, proprietary, and trade  
secret.

21 **REQUEST NO. 33**

22 All calculations, designs, drawings, schematics and other Documents relating to  
the design of the burner box as described in the Mahjoob Transcript at 302:19-  
304:8.

23 **RESPONSE TO REQUEST NO. 33**

24 Defendant objects to this Request on the basis that it seeks information that is  
25 confidential, proprietary, and trade secret.

26 Subject to and without waiver of the foregoing objections, Defendant responds as  
27 follows: Defendant will produce relevant drawings related to the burner box with  
the exception that it will not produce proprietary design drawings that would  
28 enable CH2E copy Defendant's technologies and systems.

1           **E.       ACTI Continues to Refuse to Produce the Complete Design Drawings, Citing**  
2           **an Abstract Fear that CH2E Will Not Abide by the Terms of the Stipulated**  
3           **Protective Order.**

4           On June 16, 2016, counsel for CH2E sent a letter to counsel for ACTI explaining that  
5           ACTI had already agreed that the Stipulated Protective Order would govern the production of  
6           information that purportedly contains proprietary business information. *See* Szewczyk Dec., ¶ 4  
7           and Ex. 1 (June 16 Letter). CH2E also explained that ACTI had never produced a privilege log  
8           for any documents it has withheld. *Id.*

9           On July 5, 2016, counsel for ACTI sent a letter to counsel for CH2E admitting that “a  
10          Stipulated Protective Order is in place in this case,” but insisting that it need not produce  
11          complete design drawings—even though complete and detailed drawings were required by the  
12          Agreement—and instead that it would produce partial drawings. *See id.* at ¶ 5 and Ex. 2 (July 5  
13          Letter). ACTI explained that it was concerned that CH2E would not abide by the Stipulated  
14          Protective Order and instead “us[e] ACTI’s complete design drawings as a basis to engineer  
15          similar waste to energy equipment.” *Id.*

16          On August 3, 2016, counsel for CH2E sent an email to counsel for ACTI requesting that  
17          ACTI at least produce the documents over which there was no dispute. *See id.* at ¶ 6 and Ex. 3  
18          (August 3 Email). On August 5, 2016, ACTI responded by producing a single spreadsheet. *See*  
19          *id.* at ¶ 7.

20          On August 24, 2016, counsel for CH2E again conferred with counsel for ACTI in an  
21          email, explaining in detail the pending discovery disputes and requesting that ACTI respond by  
22          August 29, 2016. *See id.* at ¶ 8 and Ex. 4 (August 24 Email).

23          On August 26, 2016, counsel for ACTI responded to CH2E’s conferral email and again  
24          refused to turn over the complete set of design drawings. *See id.* at ¶ 9 and Ex. 5 (August 26  
25          Email). ACTI’s purported reason for withholding the drawings is a “concern that these requests  
26          are not aimed at legitimate discovery, but at stealing the trade secrets and intellectual property of  
27          ACTI.” *Id.* ACTI claims that its “concern” is based on an understanding that one of CH2E’s  
28          investors had “indicated a desire in the past to emulate the pyrolysis system designs developed  
            by ACTI.” *Id.*



1 On August 31, 2016, counsel for CH2E conferred with counsel for ACTI telephonically  
2 in an attempt to resolve the discovery issues without involving the Court. Counsel for CH2E  
3 explained that the terms of the Stipulated Protective Order expressly prohibit the very concerns  
4 ACTI has articulated. *See id.* at ¶ 10. Counsel for ACTI would not agree to produce the detailed  
5 design drawings, but stated that he would confer with his client to see if a compromise could be  
6 reached. Counsel for ACTI also stated that the alleged conversation between his client and the  
7 CH2E investor occurred several years ago. *Id.*

8 On September 8, 2016, counsel for CH2E again conferred with counsel for ACTI  
9 telephonically. Counsel for ACTI stated that ACTI would produce one copy of the design  
10 drawings, but only if the parties amended the Stipulated Protective Order to include an  
11 “attorneys eyes only” level of protection that included a restriction whereby no copies of the  
12 document could be made (the “No Copy AEO Provision”). Counsel for CH2E informed counsel  
13 for ACTI that they would confer with their client regarding the offer. *Id.* at ¶ 11.

14 Because a No Copy AEO Provision is unnecessary and impractical, on September 27,  
15 2016, counsel for CH2E informed counsel for ACTI that CH2E could not accept the offer. *Id.* at  
16 ¶ 12. ACTI’s counsel responded that he was out of the country until October 7, but requested  
17 additional information regarding CH2E’s position. *Id.* at ¶ 13. On October 12, counsel for  
18 CH2E informed counsel for ACTI that the No Copy AEO Provision would prejudice CH2E’s  
19 trial preparation, would effectively prevent CH2E’s counsel from communicating internally.

20 Accordingly, CH2E was left with no choice but to file this Motion to obtain the most  
21 crucial evidence in this case.  
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**ARGUMENT**

1  
2 Given the claims and defenses of this case, and the clear terms of the Agreement, ACTI  
3 has no reasonable basis to withhold any part of the calculations, designs, drawings, or schematics  
4 relating to the Equipment or the Pilot Unit.

5  
6 ***I. The Complete Design Drawings for the Equipment Are Not Only Relevant, But Crucial  
to Multiple of CH2E's Claims in this Case.***

7 CH2E has asserted that ACTI committed fraud, breach of contract and breach of warranty  
8 by representing that ACTI was capable of designing two pyrolysis units that could each process  
9 3.125 tons of feedstock per hour, 24 hours a day. The design drawings touch directly on the  
10 issue of whether it was mathematically possible for the entirety of the Equipment, as designed by  
11 ACTI, to produce at the promised levels of output. Further CH2E has asserted a breach of  
12 contract claim based in part on ACTI's failure to abide by its contractual requirement to provide  
13 complete and detailed drawings for the Equipment, meaning the pyrolysis system as a whole.  
14 Ex. A (Agreement) at CH2E-0176317, CH2E-0176320.

15 Thus, the existence and substance of the complete and detailed design drawings go to the  
16 heart of several of CH2E's claims.

17 ACTI does not seriously contest the relevancy of the design drawings for the Equipment,  
18 which are sought by Request Nos. 31 and 33. Instead, ACTI has tried to sidestep the issue by  
19 agreeing to produce only partial drawings, while citing the proprietary nature of the documents  
20 as grounds for not producing the complete set. ACTI's argument fails for two reasons.

21 *First*, CH2E's claims allege that ACTI's Equipment—as an entire system—could not  
22 work as promised and warranted. Complete and detailed design drawings are necessary to  
23 determine whether the Equipment could theoretically work as ACTI promised. The production  
24 of partial drawings or component drawings is insufficient because it would allow ACTI to hide  
25 system-wide inefficiencies, including inefficiencies that occur as the product travels throughout  
26 the system from component to component.

27 Further, as explained above, the Agreement at issue in this case required ACTI to  
28 produce complete and detailed design drawings—not partial drawings. ACTI's failure to do so is

1 one of the bases for CH2E's breach of contract claim.

2 Therefore, the complete design drawings are necessary to fully adjudicate CH2E's  
3 claims.

4 *Second*, under Nevada law, parties are not permitted to continuously object to the  
5 production of documents on the basis that they contain confidential business information or trade  
6 secrets when a stipulated protective order already governs the production of such documents.  
7 *See Koninklijke Philips Electronics N.V. v. KXD Tech., Inc.*, No. 2:05-cv-01532-RLH-GWF,  
8 2007 WL 778153, at \*4 (D. Nev. Mar. 12, 2007) (overruling objections based on proprietary  
9 nature of documents because "a stipulated protective order regarding the production of  
10 confidential and proprietary information has been entered in this case").

11 This legal doctrine is particularly appropriate in this case because ACTI asked the Court  
12 to enter the Stipulated Protective Order so that ACTI could produce the exact documents now at  
13 issue. Indeed, after ACTI refused to produce the design drawings of the Equipment in response  
14 to the First Requests, the parties negotiated the terms of the Stipulated Protective Order to  
15 alleviate ACTI's concerns regarding the purported proprietary nature of the drawings.  
16 Nonetheless, ACTI is again refusing to produce the same documents, citing an unfounded fear  
17 that CH2E will violate the terms of the Stipulated Protective Order.

18 The Stipulated Protective Order protects ACTI from the very scenario with which it is  
19 concerned—the disclosure or use of Confidential Discovery Material for an improper purpose.  
20 The reason the terms of the Stipulated Protective Order are so on point is that ACTI negotiated  
21 these terms and asked the Court to enter them so that ACTI could produce these exact  
22 documents.

23 ACTI's new position that the Stipulated Protective Order should be amended to include a  
24 No Copy AEO Provision is both unnecessary and impractical. As explained above, the current  
25 terms of the Stipulated Protective Order directly addresses ACTI's concerns using the exact  
26 language ACTI told this Court was sufficient. Further, the CH2E investor with whom ACTI is  
27 purportedly concerned is not entitled to access documents marked as Confidential under the  
28 Stipulated Protective Order. ACTI's real concern, therefore, is that CH2E will not abide by the

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1 Stipulated Protective Order, not that the Stipulated Protective Order is insufficient.

2 Further, the No Copy AEO Provision itself is prejudicial to CH2E and gives ACTI an  
3 unfair advantage. Under the No Copy AEO Provision, ACTI would produce one copy of the  
4 document to CH2E’s counsel, who would be prohibited from making any copies. CH2E’s  
5 counsel, who are located in more than one office, would therefore be unable to review and  
6 discuss internally on any effective level. Further, CH2E’s expert would presumably have to  
7 travel to counsel’s office to review the document, which would impair the expert’s ability to  
8 perform a complete analysis. In fact, under the AEO Provision, CH2E would not even be able to  
9 make a copy to use at the deposition of ACTI’s corporate representative.

10 And, whereas ACTI’s counsel and expert will be free to confer with and rely upon the  
11 technical understanding and experience of ACTI personnel, CH2E’s counsel and expert would  
12 not be on the same playing field. Simply put, the No Copy AEO Provision would tilt the scales  
13 in ACTI’s favor when the Stipulated Protective Order prevents the exact event about which  
14 ACTI is concerned.

15 Thus, ACTI’s position—which is based on a purported “indication of a desire to emulate”  
16 made long before CH2E knew that the Equipment could not perform as promised and even  
17 longer before Court entered the Stipulated Protective Order—lacks any legal merit and is nothing  
18 more than a last ditch effort to avoid disclosing the most central documents of the case.

19 Simply put, ACTI lacks any good faith basis for withholding the complete design  
20 drawings currently in its possession. Nor can ACTI claim that CH2E’s request for the complete  
21 set of drawings is disproportionate to the needs of the case. The burden or expense that ACTI  
22 will incur producing these documents—which by Mahjoob’s own admission is minimal—is  
23 clearly outweighed by their importance to this case.

24 Accordingly, this Court should order ACTI to immediately produce all documents  
25 responsive to Request Nos. 31 and 33, including the complete and detailed design drawings for  
26 the Equipment.

27  
28

1 **II. The Detailed Design Drawings Related to the Pilot Unit Are Crucial to CH2E's Claims**  
2 **and Necessarily Discoverable.**

3 ACTI refuses to produce design drawings of and other documents related to the Pilot  
4 Unit—which, according to Mahjoob himself, served as the basis for the Agreement's terms and  
5 warranties—on the grounds that the documents are not relevant and “confidential, proprietary,  
6 and trade secret.” Once again, ACTI's argument fails.

7 ACTI admits the Pilot Unit was one of the marketing tools it used to induce CH2E into  
8 purchasing the Equipment. And, according to Mahjoob's own testimony, the Agreement's  
9 empirical warranty—which guarantees the Equipment is capable of specific throughput and  
10 product yields—was purportedly formulated from tests run on the Pilot Unit. *See* Ex. E  
11 (Mahjoob Tr.) at 248:21-25. ACTI also used these tests to assure CH2E that it had established  
12 “predictable, replicable system efficiencies” which could be replicated on a larger scale. Ex. A  
13 (Agreement) at 15. Thus, the design and capabilities of the Pilot Unit served as the basis of the  
14 Agreement's terms and warranties.

15 CH2E is entitled to compare the drawings from the Equipment to the Pilot Unit to assess  
16 the technical feasibility of “scaling up” such technology and the reasonableness of the warranties  
17 in the Agreement. Given the broad scope of discovery, the Pilot Unit's design drawings are  
18 clearly relevant and discoverable. *See* F.R.C.P. 26(b)(1) (allowing discovery for any  
19 nonprivileged matter that is relevant to any party's claim or defense and that appears reasonably  
20 calculated to lead to the discovery of admissible evidence); *see also Shoen v. Shoen*, 5 F.3d 1289,  
21 1292 (9th Cir. 1993) (scope of pre-trial discovery “accorded a broad and liberal treatment”  
22 (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947))).

23 Furthermore, as discussed above, ACTI can no longer withhold documents based on their  
24 proprietary nature. A protective order is in place that governs the disclosure of these documents.  
25 ACTI's continued refusal to produce these documents and insistence on a prejudicial No Copy  
26 AEO Provision can be seen as nothing more than an attempt to avoid liability for its fraudulent  
27 actions and breach of contract.

28 Finally, ACTI cannot claim that CH2E's request for the design drawings of and other

1 documents related to the Pilot Unit is disproportionate to the needs of this case. The burden or  
2 expense that ACTI will incur producing these highly probative documents—which, like the  
3 design drawings for the Equipment, is minimal—is outweighed by their importance to this case.

4 Accordingly, this Court should order ACTI to immediately produce all documents  
5 responsive to Request No. 32, including detailed design drawings related to the design of the  
6 Pilot Unit.

7 **CONCLUSION**

8 For the foregoing reasons, CH2E moves this Court for an order compelling ACTI to  
9 produce, within five days of the Court’s order, all documents responsive to Request Nos. 31, 32  
10 and 33. CH2E further asks the Court award of CH2E its expenses in bringing this Motion,  
11 including attorneys’ fees, pursuant to Federal Rule of Civil Procedure 37.

12 Dated: October 18, 2016.

13 BALLARD SPAHR LLP

14 */s/ Peter Haviland*

15 Abran E. Vigil  
16 Nevada Bar No. 7548  
17 100 North City Parkway, Suite 1750  
18 Las Vegas, Nevada 89106-4617

19 Peter L. Haviland  
20 2029 Century Park East, Suite 800  
21 Los Angeles, California 90067

22 Roger P. Thomasch  
23 Gregory P. Szewczyk  
24 1225 17th Street, Suite 2300  
25 Denver, Colorado 80202-5596

26 *Attorneys for Plaintiff CH2E Nevada, LLC*  
27  
28

BALLARD SPAHR LLP  
100 NORTH CITY PARKWAY, SUITE 1750  
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(702) 471-7000 FAX (702) 471-7070

BALLARD SPAHR LLP  
100 NORTH CITY PARKWAY, SUITE 1750  
LAS VEGAS, NEVADA 89106  
(702) 471-7000 FAX (702) 471-7070

**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on the 18th day of October 2016, and pursuant to Fed. R. Civ. P. 5(b),  
3 a true and correct copy of the foregoing **CH2E'S MOTION TO COMPEL AMERICAN**  
4 **COMBUSTION TECHNOLOGY INC. TO PRODUCE REQUESTED DOCUMENTS** was  
5 electronically filed and served through the Court's CM/ECF system, which will send a notice of  
6 electronic filing to the following:

7 Hector Carbajal  
8 Matthew C. Wolf  
9 CARBAJAL & MCNUTT, LLP  
10 625 South Eighth Street  
11 Las Vegas, Nevada 89101  
12 Telephone: (702) 384-1170  
13 Facsimile: (720) 384-5529  
14 hjc@cmlawnv.com  
15 mcw@cmlawnv.com

12 James K. Kawahito  
13 Alison Rose  
14 KAWAHITO SHRAGA & WETRICK LLP  
15 1990 South Bundy Drive  
16 Los Angeles, CA 90025  
17 Telephone: (310) 746-5300  
18 jkawahito@kswlawyers.com  
19 arose@kswlawyers.com

16 /s/ Mary Kay Carlton

20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**



**American Combustion Technologies, Inc.**  
7350 Adams Street  
Paramount, CA 97023  
USA

---

**PURCHASE AGREEMENT**

***Between American Combustion Technologies, Inc. and CH2E Nevada LLC  
for Two (2) 75 Tons Per Day Tires Pyrolysis Systems***

THIS PURCHASE AGREEMENT (including all Schedules and Exhibits hereto, this "Purchase Agreement") is made and entered into as of \_\_\_\_\_, 2012 (the "Effective Date") by and between American Combustion Technologies, Inc. (being, for the purposes of this Purchase Agreement, both the seller and manufacturer, which shall hereinafter be referred to as the "Seller"), having a place of business at 7350 Adams Street, Paramount CA 97023 and CH2E Nevada LLC (the "Purchaser") having a place of business at 21564 Encina Road, Topanga, CA 90290.

**THE PARTIES RECITE:**

- (A) Purchaser intends to operate a plant located in Nevada (the "Nevada Plant") for the purpose of producing energy commodities from renewable resources (the "Nevada Project").
- (B) Seller desires to manufacture and sell to Purchaser all of such machinery, equipment, technologies and systems described in Section 1 of Exhibit A ("ACTI Machinery, Equipment, Technologies, Systems, and Warranties") attached hereto (collectively, the "Equipment") on the terms and conditions set forth herein.
- (C) Purchaser desires to purchase the Equipment from Seller for installation and operation at the Nevada Plant, which Equipment is vital for the operation of the Nevada Project.

**THE PARTIES AGREE:**

1. **DEFINITIONS.** The terms used in this Purchase Agreement with their initial letters capitalized shall, unless the context otherwise requires or unless otherwise expressly provided in this Purchase Agreement, have the meanings specified in this Section 1.

"Affiliate" of a Person means any other Person (a) which controls such first Person or a Related Party of such first Person, (b) which is controlled by such first Person or a Related Party of such first Person, (c) which is under common control with such first Person or with a Related Party of such first Person, or (d) which is a Related Party of such first Person. For purposes of the definition of "Affiliate," "control" (including, with correlative meaning, the terms "controlled by" and "under common control with") as used with respect to an entity, means the possession, "directly or indirectly", of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

"OSHA" means Occupational Safety and Health Administration.

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**"Person"** means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, association, organization, government authority or other entity of any kind or nature.

**"Related Party"** of any person means any spouse, parent, sibling, child, issue, adopted child, stepchild or other lineal descendants of such person or any ancestor of such person or any trust or other entity principally for the benefit of such person or any of such Related Parties.

**"Title Transfer Date"** means the date of the final payment on which the title of the Equipment is transferred to Purchaser.

In addition, the following terms shall have the meanings given them in the referenced section or other portion of this Purchase Agreement:

<u>Term</u>	<u>Section</u>
Delivery Deadline	Exhibit B, Section 2.2
Delivery Location	Exhibit B, Section 2.3
Down Payment	Exhibit A, Section 9.2
Effective Date	Preamble
Equipment	Recital B
Indemnified Party	Section 7.1
Initiation Costs	Exhibit B, Section 1
Inspection Period	Exhibit B, Section 4.3
Installation Acceptance Report	Exhibit A, Section 11.1.1
Installation Site	Exhibit A, Section 9.2
Losses	Section 7.1
Milestone(s)	Exhibit A, Section 4
Nevada Plant	Recital A
Nevada Project	Recital A
Part(s)	Exhibit A, Section 1.2
Payment	Exhibit B, Section 3.2
Purchase Agreement	Preamble
Purchase Price	Exhibit B, Section 1.1
Purchaser	Preamble
Required Authorizations	Section 16
Seller	Preamble
Seller Default	Section 8.1
Start-Up and Training Report	Exhibit A, Section 11.1.2
Timeline	Section 4
Training Period	Exhibit A, Section 3.3
Warranty Period	Exhibit A, Section 12.2.3

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2. **PURCHASE PRICE.** In consideration for the payment by Purchaser of the Purchase Price, the details of which are set forth in Exhibit B ("Price Schedule, Delivery Schedule and Payment Terms"), Seller hereby sells to Purchaser the Equipment in accordance with the terms set forth herein.
3. **PERMITTED USE.** The Equipment shall be used by Purchaser, and by all individuals or entities to whom Purchaser resells the Equipment and all subsequent holders of any interest in the Equipment, for the purpose of producing gas from tires. In connection therewith, no changes or modifications to the Equipment or to the use to be made of the Equipment may be made by any individual or entity during the Warranty Period without the prior written consent of Seller of which will not be unreasonably withheld, except for any such changes or modifications as Purchaser deems necessary for the operation of the Equipment for its intended purpose. Failure to obtain such written consent when required may void equipment and/or performance warranties.
4. **TIME FOR COMPLETION.** Seller shall satisfy each of the Milestones in accordance with the schedule and times set forth in Section 4 of Exhibit A (the "Timeline").
5. **INTELLECTUAL PROPERTY AND OTHER PROPRIETARY INTERESTS OF SELLER.**

5.1 Purchaser agrees that all concepts, technologies, designs and ideas which are a part of, or are related to, the Equipment are and shall remain the property of Seller. Purchaser covenants not to copy, duplicate, convert, transfer, assign or sell those proprietary interests, except as necessary in connection with any permitted transfer, assignment or sale of the Equipment by Purchaser to any Affiliate or third party.

5.2 Purchaser shall not manufacture a pyrolysis machine or system or associated equipment using the technology developed by Seller, or using the concepts or designs described in any of Seller's patents issued or pending, which patents are listed in Schedule I to this Purchase Agreement.

6. **TITLE; RISK OF LOSS.**

6.1 Title to all materials, equipment, supplies and other elements of the Equipment shall pass to Purchaser upon receipt of final payment and delivery of the Equipment to the Nevada Plant.

6.2 Seller bears all risk of loss or damage to the Equipment until delivery of the Equipment.

7. **INDEMNIFICATION.**

7.1 Seller shall be liable to and defend, indemnify and hold harmless each of Purchaser and its Affiliates, successors or assigns and their respective directors, officers, members, employees, invitees and permitted subcontractors and Purchaser's customers (each, an "**Indemnified Party**") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance coverage (collectively, "**Losses**") arising out of injuries, or death of Seller's employees in connection with the Equipment or the acts or omissions, or the breach of the terms of this Purchase Agreement by,

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Seller or its permitted subcontractors, agents or employees. Seller shall not enter into any settlement in connection with any indemnification obligation provided hereunder without Purchaser's or Indemnified Party's prior written consent.

7.2 Seller shall, at its sole expense, defend, indemnify and hold harmless Purchaser and any Indemnified Party against any and all Losses arising out of or in connection with any claim that Purchaser's or the Indemnified Party's use or possession of the Equipment infringes or misappropriates the patent, copyright, trade secret or any other license or proprietary or intellectual property right of any third party. In no event shall Seller enter into any settlement in connection therewith without Purchaser's or the Indemnified Party's prior written consent.

## 8. EVENTS OF DEFAULT.

8.1 Events of Default. Each of the following events or conditions shall constitute an event of default by Seller (a "**Seller Default**"):

8.1.1 failure to maintain the insurance coverage specified in Section 9;

8.1.2 failure to complete the sale of the Equipment in compliance with this Purchase Agreement;

8.1.3 failure to timely deliver replacement Equipment under Section 4.5 of Exhibit B;

8.1.4 filing by or against Seller of a petition in bankruptcy or an arrangement of reorganization;

8.1.5 becoming insolvent or going into liquidation or dissolution or making a general assignment for the benefit of creditors or otherwise acknowledging insolvency; or

8.1.6 failure to meet the Delivery Deadline. For remedy refer to 8.2.5 below.

8.2 Default by Seller. Upon a Seller Default, Purchaser shall be entitled, at its option, to:

8.2.1 the remedies of specific performance against Seller at the cost and expense of Seller;

8.2.2 immediately obtain possession of the Equipment or any portion thereof and to deduct any cost associated with such action from any monies due or to become due to Seller under this Purchase Agreement; or

8.2.3 terminate this Purchase Agreement, in whole or in part, for all or any portion of the Equipment, with immediate effect upon written notice to Seller, either before or after the delivery of the Equipment.

8.2.4 Seller shall be liable to and reimburse Purchaser for liquidated damages resulting from the delay in satisfying any Milestones or delivering the Equipment by the Delivery Deadline, as set forth in this Section.

8.2.5 If the delivery of the Equipment is delayed more than one (1) week

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beyond the Delivery Deadline, then Seller shall provide notice, which includes a description of the causes of such delay, to Purchaser. If Seller is responsible for such delay and Purchaser accepts such notice, then after receipt of notice by Purchaser, Seller shall pay Purchaser as a reasonable prior estimate of damages (and not as a penalty) a sum equal to \$100,000 per week up to a maximum cap of 7.5% of the Purchase Price.

**8.3 Default by Purchaser.** Seller shall have the right to suspend or terminate this Purchase Agreement after thirty (30) days' written notice if Purchaser fails to make any payment when due. If this Purchase Agreement (or any portion thereof) is terminated by Seller, Purchaser shall pay Seller for all partially completed services performed before the effective date of termination, subject to Purchaser's right to offset any amounts owed to Purchaser under the terms of this Purchase Agreement.

**8.4 Refund of Payments.** In the event Purchaser terminates this Purchase Agreement as a result of a Seller Default, Seller shall refund all Payments made by Purchaser pursuant to Section 3.2 of Exhibit B through the date of such termination; *provided, however*, that if prior to the time of such termination, Seller shall have begun assembly of the Equipment pursuant to Section 4 of Exhibit A, the Design Fee Payment and the Down Payment shall no longer be refundable.

**9. INSURANCE.**

**9.1** Seller shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by Seller or by any of its permitted subcontractors or by anyone employed by any of them, including, but not limited to, any warranty or indemnification obligations of Seller hereunder. Such insurance shall not be less than the greater of coverage and limits of liability specified in this Purchase Agreement, or coverage and limits required by law. Seller shall provide certificates with respect to such insurance (and renewal certificates, if applicable) to Purchaser upon Purchaser's request.

**9.2** Seller shall procure and maintain the following minimum insurance coverage:

Worker's Compensation	Statutory Limits
Employer's Liability	\$1,000,000
Commercial General Liability	\$2,000,000

**10. APPLICABLE LAW.** This Purchase Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the internal laws of the State of Nevada, without regard to its conflict of laws rules or choice of law principles. Each party hereto (i) agrees that any suit, action or other legal proceeding relating hereto shall be brought in the courts located within the State of Nevada, (ii) consents to the exclusive jurisdiction of the aforesaid courts in any such suit, action or proceeding, and (iii) waives any objection such party may have to the laying of venue in any such suit, action or proceeding in either such court.

**11. RESALE.** Purchaser may not resell the Equipment without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed;

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*provided, however,* that Purchaser may sell the Equipment or any portion thereof without Seller's consent (a) in connection with the enforcement of the Pledge Agreement or (b) at any time and to any Person, after one (1) year after the Title Transfer Date. To the extent any warranties of Seller remain outstanding when the Equipment is sold by Purchaser to a third party, such third party shall be entitled to such warranties and be subject to any conditions to the warranties provided under this Purchase Agreement.

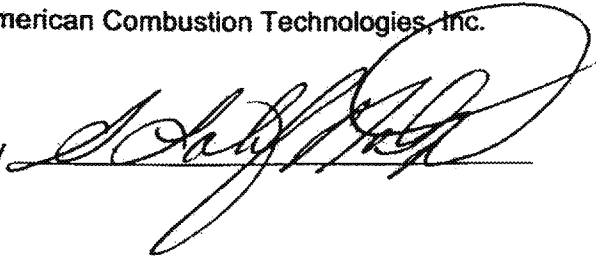
12. **ATTORNEY'S FEE.** In the event that any suit or action is instituted to enforce any of the terms or provisions of this Purchase Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees as determined by the court at trial, and by any appellate court upon appeal, if any, and its reasonable costs so incurred. It is specifically agreed that either party shall have the right to institute action to enforce or obtain damages for any breach or violation by the other party of the terms and conditions set forth herein.
13. **WAIVER.** Any waiver of any right or remedy by either party under this Purchase Agreement shall not constitute a waiver of the same or any other right or remedy which may exist prior or subsequent thereto.
14. **INSPECTION.** For one (1) year following the Title Transfer Date, Purchaser agrees to allow Seller to (a) view the Equipment in operation and (b) show the Equipment in operation to prospective purchasers of other reasonably similar systems from Seller; *provided, however,* that such viewing and/or showing shall be during reasonable business hours, upon reasonable advance notice by Seller and shall not disrupt Purchaser's operation of the Nevada Plant. In connection with clause (b), Seller shall provide Purchaser with the identity of any such prospective purchaser(s) upon request from Purchaser. Notwithstanding anything to the contrary in this Purchase Agreement, if Purchaser determines that allowing any prospective purchaser to view the Equipment in operation is not in the best interest of Purchaser's business, including if such prospective purchaser is a competitor of Purchaser, Purchaser shall not be required to permit Seller to show the Equipment in operation to such prospective purchaser.
15. **ASSIGNMENT.** Neither this Purchase Agreement nor any of the rights or obligations hereunder shall be assigned or subcontracted by either party without the prior written consent of the other party; *provided, however,* that Purchaser may, without Seller's consent, assign or transfer any or all of its rights or obligations hereunder to an Affiliate or in connection with the enforcement of the Pledge Agreement. Any attempted assignment or attempt to subcontract in violation of the terms of this Section shall be null and void, *ab initio*.
16. **COMPLIANCE WITH LAW.** Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances, including, without limitation, those relating to OSHA, without additional expense to Purchaser, and shall correct, at its own cost and expense, any violations thereof. Seller has and shall maintain in effect all licenses, permissions, authorizations, consents and permits (collectively, the "**Required Authorizations**") that it needs to carry out its obligations under this Purchase Agreement. Further, the Purchase Price includes, and Seller shall obtain and pay for, all such Required Authorizations and other fees including any duties or other taxes related to the import, export, storage or delivery of any portion of the Equipment as necessary to furnish the Equipment in accordance with this Purchase Agreement. Seller shall comply with all export and import laws of all countries involved in the sale of the Equipment under this

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Purchase Agreement. Seller assumes all responsibility for shipments of parts of the Equipment requiring any government import clearance. Seller shall furnish such proof as Purchaser may request showing compliance and correction of any violations.

EXECUTED on the day and year first above written:

American Combustion Technologies, Inc.


By 

Name: Latif Mahjoob  
Title: President

CH2E Nevada LLC

By \_\_\_\_\_

Name:  
Title: President

Initials:  \_\_\_\_\_  
NEWYORK 8633927

EXECUTED on the day and year first above written:

American Combustion Technologies, Inc.

By 

Name: Latif Mahjoob  
Title: President

CH2E Nevada LLC

By 

Name: Francis Beland  
Title: Manager

[Signature Page to Equipment Purchase Agreement]



**PURCHASE AGREEMENT**

**Between American Combustion Technologies, Inc. and CH2E Nevada LLC  
for Two (2) 75 Tons Per Day Tires Pyrolysis Systems**

**EXHIBIT A**



*American Combustion Tech., Inc.*

**ACTI Machinery, Equipment, Technologies, Systems, and Warranties**

**1. THE "EQUIPMENT".**

1.1 General Description of ACTI Technology and System for the Pyrolysis of Tires.  
The ACTI Pyrolysis System is comprised of two (2) systems of the model ACGF75-Tires Pyrolytic gasification unit capable of processing 3.125 tons per hour of shredded tires to diesel, producer gas and carbon black.

1.2 ACTI Machinery Included in System. Each 75 tons per day tires Pyrolysis to System being purchased through this Purchase Agreement is comprised of (each a "Part" and collectively, the "Parts"):

- (1) One (1) 3.125 tons/hr. continuous pyrolytic process vessels
- (2) PLC Controller with touch screen
- (3) One (1) Master control panels for operating the pyrolytic systems
- (4) Two (2) gas train assemblies
- (5) One (1) particle separators
- (6) Two (2) Retort pressure control systems
- (7) Two (2) furnace temperature control systems
- (8) Two (2) Retort temperature control systems
- (9) One (1) Emergency safety gas relief valves
- (10) One (1) Liquid gas scrubber systems and tanks
- (11) One (1) oil recirculation and filtration systems
- (12) One (1) /oil cooling heat exchangers
- (13) One (1) large de-mister systems
- (14) One (1) large condensers
- (15) One (1) condenser tanks
- (16) One (1) gas/oil separators
- (17) Two (2) large gas blowers
- (18) One (1) intermediate gas tanks
- (19) One (1) mother board control systems for controlling all flow valves
- (20) One (1) master control PLC operated electric panels with all lights, switches and touch screen monitoring systems
- (21) All required control valves operated by the PLC system
- (22) One (1) cooling towers
- (23) Two (2) water pumps for the cooling towers
- (24) One scrubber Oil cleaning and re-circulation system
- (25) All electrical panels for all units as necessary

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- (26) Two (2) 1.5 million Btu/hr gas-operating burner
- (27) Four (4) gasification inlet valves
- (28) Four (4) gasification outlet valves
- (29) Four (4) sets of retort augur/motor and gear box assemblies
- (30) All electrical panels and control systems
- (31) One (1) oil distillation system
- (32) One (1) Hydrogenation system

2. **ITEMS NOT INCLUDED IN THE ACTI MODEL ACGF-75-TIRES PYROLYSIS SYSTEM.** The following are not included with each 75 tons per day tires Pyrolysis to System being purchased through this Purchase Agreement:

- (1) Waste tire processing, supply, weighing and transfer system including hopper feeders (2)
- (2) Two (2) gas storage tanks for producer gas, 150 PSIG with a 2 day storage capacity
- (3) Desulfurization system for both gas and liquid
- (4) Spare parts (recommended list will be provided and will include pricing for the major components in the list)
- (5) Gas supply for cold start-up, electrical supply for start-up
- (6) Shipping and handling
- (7) Enclosed building, concrete pad, engineering design and layout of footings
- (8) Installation of system into building in pre-set layout of system

3. **INITIATION SERVICES.**

Seller shall provide Purchaser with the following (collectively, the "Initiation Services"):

3.1 Installation Supervision. Seller shall provide supervision of assembly and installation at the Nevada Plant for a period of two (2) weeks commencing on the Delivery Date.

3.2 Start-Up Process. Seller shall provide supervision of the start-up and wring out process of the system for a period of two (2) weeks commencing on the Delivery Date.

3.3 Training. Seller shall make reasonable training services available to Purchaser at no additional charge. At a minimum, Seller agrees to provide the following to Purchaser during the 30 days following the delivery of the Equipment (the "Training Period"): (a) training to Purchaser's personnel sufficient to allow them to be qualified as "skilled". Seller will provide additional training as the parties mutually determine to be necessary, whether during or after the Training Period, to adequately train Purchaser's personnel on the Equipment.

3.4 Reports. Seller shall complete and submit to Purchaser the Installation Acceptance Report upon completion of the installation and the Start-Up and Training Report upon completion of the Initiation Services, each in a form mutually agreed to by Seller and Purchaser.

4. **ENGINEERING, MANUFACTURING, PRODUCTION AND DEPLOYMENT MILESTONES AND TIMELINE.**

Seller shall achieve each of the milestones set forth below (each a "Milestone" and, collectively,

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the "Milestones") in accordance with the terms of this Purchase Agreement and by the applicable deadlines set forth below.

Timing (Days from Effective Date)	Milestones
0	<ul style="list-style-type: none"> <li>• Establish a bill of materials for the project</li> <li>• Begin purchase of all major OEM long-lead components</li> <li>• Complete drawings for the pyrolysis system</li> </ul>
30	<ul style="list-style-type: none"> <li>• Complete purchase of all major components</li> <li>• Complete list and pricing for all recommended spare parts for integrated system</li> </ul>
60	<ul style="list-style-type: none"> <li>• Begin assembly of the Equipment</li> <li>• Submit detailed equipment and arrangement drawings needed for preparation of installation site by Purchaser</li> </ul>
90	<ul style="list-style-type: none"> <li>• Continue assembly of the Equipment</li> </ul>
120	<ul style="list-style-type: none"> <li>• Complete assembly of the Equipment</li> <li>• Perform a dry run of the system</li> </ul>
150	<ul style="list-style-type: none"> <li>• Finish system testing</li> <li>• Paint system, acrylic oil base, fast drying semi-gloss, blue</li> <li>• Prepare system for shipment, professional shippers, custom packaging</li> <li>• Complete preparation of all needed operational manuals and training materials</li> <li>• Ship to Purchaser</li> <li>• Delivery/Transfer of title to Equipment to Purchaser</li> </ul>
180	<ul style="list-style-type: none"> <li>• Provision of Initiation Services</li> </ul>

#### 5. GENERAL CONSTRUCTION OF PYROLYSIS SYSTEM.

Exterior process vessel shell and entire support structure shall be fabricated of heavy mild steel plate, structurally reinforced and supported with heavy steel members as dictated by accepted industrial engineering practices.

Fixtures and components exposed to high temperature or corrosive atmospheres are to be manufactured of stainless alloys.

All Equipment shall comply with all applicable federal, state and local codes and regulations, including the National Electric Code of the United States, with which all electrical components and wiring shall conform. All process vessel wiring shall be

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protected with steel conduit, metal wire ways and liquid-tight, flexible metal conduit. Electrical construction is to be of a liquid-tight design. Explosion-proof construction is to be incorporated in the gas processing system module.

**6. UTILITY REQUIREMENTS TO BE MET BY PURCHASER.**

- (A) Electrical: 480 volts/3 phase/60 Hz
- (B) Natural gas: 5-25 PSI natural gas or diluted propane (only need small volume for start-up as system provides parasitic needs, 1000 BTU/FT<sup>3</sup>, average consumption for start-up is 12,000,000 BTU)
- (C) Compressed air: 125 PSI air compressor (120 gallon capacity)
- (D) City water

**7. PURCHASER RESPONSIBILITIES.**

Purchaser herein agrees to provide in a timely manner the following items:

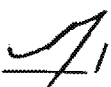
7.1 The payment for all necessary utilities, building permits, public inspections, licenses, air quality testing, permitting fees, application fees, shipping costs, insurance charges and the like required for installation and operation of the system,

7.2 The unloading, setting and anchoring of the system, including the provision of any necessary foundations, enclosures and/or buildings.

7.3 All field erection activities under Seller's supervision.

7.4 The location and enclosure of the electronic control center panel and motor control panels adjacent to one another, as well as the provision of electrical service to the control panel and equipment components.

7.5 All spare parts required by Seller as set forth in Section 8 of this Exhibit A.

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**8. SPARE PARTS.**

8.1 The cost of spare parts is not included in the Purchase Price. The following represents the parties' current good faith estimate of the required spare parts list for the Equipment, including the approximate unit price and lead time for delivery of each spare part:<sup>1</sup>

1. One (1) Nord Gear box assembly	\$7500.00
2. Two(2) auger motors	\$ 800.00
3. One (1) Complete cleaning auger assembly	\$ 4500.00
4. One (1) Hydraulic pump & motor assembly	\$ 2500.00
5. One (1) complete hydraulic solenoid assembly	\$1320.00
6. One (1) set of hydraulic hoses	\$ 750.00
7. One (1) Knife gate	\$ 2100.00
8. One (1) hydraulic actuator for knife gate	\$ 500.00
9. One (1) set of oil recirculating nozzles	\$ 240.00
10. One (1) spray pump assembly	\$ 1200.00
11. Three (3) -27" - +27" pressure transducers	\$ 1320.00
12. One (1) burner control programmer "Siemens"	\$ 2800.00
13. One (1) program Processor	\$2800.00
14. One (1) HMI screen	\$ 7600.00
15. One (1) digital control card	\$ 620.00
16. One (1) Analog control card	\$ 620.00
17. One (1) 24 volt DC card	\$ 620.00
18. Four (4) motor starters	\$ 1200.00
19. Two (2) temperature probs.	\$ 420.00
20. One (1) flame scanner assembly	\$ 260.00
21. One (1) Ignition rod	\$ 110.00

No later than 30 days from the Effective Date, Seller will work with Purchaser and the component manufacturers to finalize any adjustments to any information contained in the above list.

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**9. AGREEMENT ON INSTALLATION AND INITIATION SERVICES.**

The parties herein agree that:

9.1 Following fabrication of the Equipment by Seller, and arrival at the Nevada Plant, Seller will commence Initiation Services.

9.2 Detailed equipment and arrangement drawings will be provided by Seller within sixty (60) days of Purchaser's payment of the initial payment for the Equipment (the "Down Payment") and will be used and relied upon by Purchaser as a basis for Purchaser to prepare the installation site (the "Installation Site") prior to shipment of the Equipment. The Installation Site is to be prepared according to the general direction of Seller, at Purchaser's cost, and Purchaser agrees to furnish a suitable foundation upon which to erect the Equipment, with free and ready ingress and egress to and from the same.

9.3 Purchaser is to furnish all necessary wiring and related materials at Purchaser's cost.

9.4 Purchaser is to indemnify and hold harmless Seller against any and all claims against any Person whatsoever arising out of, or resulting from, the erection, use or operation of the Equipment, except to the extent such claims are caused by Seller's breach of this Purchase Agreement or the negligence or willful misconduct of Seller.

9.5 Purchaser shall be liable for personal injuries or property damages, whether to the Equipment or otherwise, occasioned by or resulting from an unsuitable Installation Site, to the extent such injuries or damages are not otherwise caused by Seller's breach of this Purchase Agreement or by the negligence or willful misconduct of Seller.

Initials:       /        
NEWYORK 8633927

**10. CHANGE ORDERS.**

10.1 It is mutually agreed that changes of a major nature by Purchaser that may come about during the construction will be worked out by both parties and additional payment made or credit allowed as is deemed reasonable by both parties.

**11. PROCESS WARRANTY FOR PYROLYSIS AND LIQUEFACTION SYSTEM.**

11.1 Given the stated feedstock parameters as noted in the following table, the Equipment is warranted by Seller to provide the throughput and product yields indicated in the chart below when correctly installed and operated in accordance with Seller's written operating guidelines. In this regard, it is mutually agreed that:

11.1.1 Correct installation shall be verified by Seller prior to start-up and documented in an Installation Acceptance Report (the "Installation Acceptance Report"), the wording of which is to be mutually agreed upon before acceptance.

11.1.2 Throughput and product volumes will be demonstrated during start-up and the operator training period and documented in a Start-Up and Training Report (the "Start-Up and Training Report").

11.1.3 "Deficiencies" in the system shall not include additional gas clean-up equipment which may become necessary to add to the system to remove excessive amounts of polluting elements which Purchaser has assured Seller will not be present in their tires (e.g. chlorine or sulfur). In the event that the tires to be processed do, in fact, contain excessive amounts of these or other pollutants, then Seller shall provide a separate quote for the cost and the additional time necessary to add the equipment required to remove these elements from the gas stream. The time necessary to make these changes shall not be included in the "start-up" period provided for in Section 3.2 of this Exhibit A.

Engineering assumptions		Feedstock parameter	
Operating hours per day	24	Tons of processed Tires per system per day	75
Pounds per ton	2,200	Tons per hour per system	3.125
Generated oil per day	11,150 gal.	Moisture content of feedstock	N/A
Gas generated per day	13,200 lbs.	BTU / pound of oil	16,500
Electrical requirement KWH	300	Feedstock ash % by mass	10.5%
Carbon black /day	52,800 lbs.		
Metal generated per day	16,500 lbs.	Output parameter	
Oil heating value	16,500 Btu/lb.		
Gas heating value	1275 Btu/ft <sup>3</sup>		

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NEWYORK 8633927

\* Please note: the figures provided in the above chart have been calculated based in part on (1) standard values for certain aspects of the process (e.g., process heat in BTU per ton, producer gas ft<sup>3</sup>/lb dry waste), (2) actual values being supplied by Purchaser with regard to the feedstock volumes (e.g. 75 tons/day, tire waste of 15,500 BTU/lb.), (3) feedstock characteristics (e.g. BTU/lb, moisture content and ash content of the feedstock) and (4) the anticipated operating schedule (24 hrs/day). Over many hours of processing time as well as the processing of a large variety of feedstocks with a system similar in all aspects of operation to the Equipment being sold in this Purchase Agreement, except in terms of pounds per hour of throughput capacity, Seller has empirically established what Seller believes are predictable, replicable system efficiencies. Based on these efficiencies, Seller believes that the figures accurately depict the expected throughput results from the feedstock Purchaser intends to process with the Equipment being purchased. Seller wishes to emphasize that field conditions and factors beyond the control of Seller and/or Purchaser may vary from load to load, in particular, the actual BTU value, moisture content and ash content of the feedstock. These factors may result in throughput amounts differing from those indicated above. To the extent that these values are reasonably consistent with those indicated in the above chart, the differences in actual output will not be significant.

## 12. EQUIPMENT WARRANTY.

12.1 All items included in this Purchase Agreement are warranted by their respective manufacturers in addition to the warranties provided under this Purchase Agreement.

12.2 Seller warrants to Purchaser that:

12.2.1 Seller owns or has licensed all intellectual property necessary for Seller to perform all of its obligations under this Purchase Agreement and that Purchaser's use of the Equipment will not infringe on the intellectual property rights of any third party;

12.2.2 the Equipment shall be new; and

12.2.3 for a period of one (1) year following the Title Transfer Date (the "Warranty Period"), (a) the Equipment, the Parts and any other component of the Equipment will (i) be free of any defects in material, workmanship and design, (ii) conform to applicable specifications, drawings, designs, samples and other requirements specified by Seller, (iii) be designed and fit for Purchaser's intended purpose and operation, (iv) be merchantable, and (v) be free of any defects in legal title or ownership, including liens, claims, security interests or other encumbrances and (b) the services provided by Seller, including, without limitation, the Initiation Services, shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

12.3 Purchaser may request that Seller extend the Warranty Period for additional twenty four (24) month periods at the cost of \$100,000.00 to be agreed between Seller and Purchaser.

12.4 Under adverse ambient conditions, such as when outdoors or subject to radiant heat or exposed to corrosive or any other deleterious environments or conditions, Purchaser or

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the user shall provide special protection and special maintenance as may be required to assure proper protection of the unit and proper operation.

12.5 Written notice of any defect or abnormality must be given to Seller immediately following its discovery. If Purchaser gives notice of noncompliance, and is determined that Seller is at fault then Seller shall thereupon, at Seller's cost and expense, repair or replace the defective portion of the Equipment, including the costs involved in transporting the units to and from the Nevada Plant.

12.6 Any repair or replacement by Seller hereunder shall extend the applicable warranty period by six (6) months with respect to the defective portion of the Equipment.

12.7 These warranties and remedies are conditioned upon (i) the proper storage of the Equipment, (ii) operation and maintenance of the Equipment by qualified personnel, (iii) Purchaser's compliance with the proper operation instruction manuals provided by Seller or its suppliers or permitted subcontractors and any warnings shipped by Seller with the Equipment, (iv) properly trained and skilled operators (as verified by Seller in the Installation Acceptance Report) and (v) only using feed-stocks approved by Seller in the Equipment; *provided, however*, that the enforceability of these warranties and remedies shall not be impacted by Purchaser's failure to satisfy any of the foregoing conditions to the extent such failure is caused by any act or omission of Seller.

12.8 These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Purchaser's discovery of the noncompliance of the Equipment with the foregoing warranties.

12.9 Required equipment and system warranty documents and as-built drawings shall be delivered to Purchaser within thirty (30) days from the Title Transfer Date, or such earlier time as required by this Purchase Agreement.

**13. AIR EMISSIONS GUARANTEE.**

Seller guarantees the performance of the Equipment and the air emissions to stay below the local and federal regulatory requirements. Purchaser and Seller hereby confirm and agree on the content as noted in this Exhibit A to the Purchase Agreement.

EXECUTED on the day and year first above written:

American Combustion Technologies, Inc.

By 

Name: Latif Mahjoob, President

CH2E Nevada LLC

By \_\_\_\_\_

Title: President

Initials: LM / \_\_\_\_\_

**PURCHASE AGREEMENT**

**Between American Combustion Technologies, Inc. and CH2E Nevada LLC  
for Two (2) 75 Tons Per Day Tires Pyrolysis Systems**

**EXHIBIT B**

*American Combustion Tech., Inc.*

**Price Schedule, Delivery Schedule and Payment Terms for each 75 tons/day unit**

**1. PRICE SCHEDULE. (ALL PRICES IN US DOLLARS)**

Item	Price
ACGF -75-Tires TPD Pyrolysis System	\$5,230,000
ACTI installation supervision, start-up and training costs (collectively, "Initiation Costs")	\$ 50,000
Total price for each unit	\$ 5,280,000
<b>Total Price for 150 tons/day (2 Units)</b>	<b>\$10,560,000</b>

- All systems are FOB in Los Angeles, CA.

1.1 The total price of the Equipment and the Initiation Costs is \$10,560,000 (the "**Purchase Price**"). No increase in the Purchase Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Purchaser.

1.2 The Purchase Price does not include any applicable state or local taxes, levies or duties.

**2. DELIVERY SCHEDULE.**

2.1 Shipping. The Equipment will be ready to ship on or before six (6) months from the date of Seller's receipt of the Down Payment.

2.2 Delivery Date. Seller shall deliver the Equipment no later than 180 days from the effective date or on such other date as otherwise agreed in writing by the parties (the "**Delivery Deadline**"). Timely delivery of the Equipment is of the essence. If Seller fails to deliver the Equipment in full on the Delivery Deadline, Purchaser may terminate this Purchase Agreement immediately by providing written notice to Seller and Seller shall indemnify Purchaser against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Equipment on the Delivery Deadline, including, without limitation, costs and expenses relating to spare parts and the Installation Site.

2.3 Delivery Location. FOB Factory

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Page 17 of 20

**3. PAYMENTS; PURCHASE PRICE; SATISFACTION OF MILESTONES.**

3.1 Payment Terms. Seller shall issue an invoice to Purchaser on or any time after payments are due by Purchaser in accordance with the terms of this Purchase Agreement. Purchaser shall pay all properly invoiced amounts upon receipt of such invoice, except for any amounts disputed in good faith. All payments hereunder must be in US dollars. In the event of a payment dispute, the disputing party shall deliver a written statement to the other party no later than 30 days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Purchase Agreement notwithstanding any such dispute.

3.2 Payment of Purchase Price:

Purchaser shall pay the Purchase Price in accordance with the following (each a "Payment"):

Payment	Percent of total price	Amount of payment	When due
Design Fee Payment	3.7%	\$ 400,000	July 15 <sup>th</sup>
Down Payment	26.3%	\$ 2,768,000	Upon signing of this Purchase Agreement
Progress Payment	30%	\$ 3,168,000	2 months from Down Payment
Shipment Payment	30%	\$ 3,168,000	Just prior to shipment from Seller
Retention Payment	10%	\$1,056,600	30 day inspection period
	<b>Total</b>	<b>\$10,560,000</b>	

3.3 Compliance. Seller shall furnish the Equipment in compliance with all applicable safety, certification and testing codes and laws.

3.4 Notice. Seller shall keep Purchaser informed of the progress of any scheduled delivery and/or Milestone, including providing notice to Purchaser of any known delay in meeting any dates set forth in the Timeline. In the event that Purchaser wishes to delay delivery, Purchaser shall provide Seller at least one (1) week's notice in advance of the Delivery Deadline.

3.5 No Substitutions. No substitutions of Parts or any other portion of the Equipment for items called for by this Purchase Agreement shall be made unless approved in writing by Purchaser, which approval shall not relieve Seller from satisfactory and timely completion and delivery of the Equipment or from conformance of the Equipment to this Purchase Agreement.

**4. INSPECTION OF EQUIPMENT.**

Initials:   *MI*

4.1 Purchaser and its authorized representatives shall have the right to test and inspect the Equipment and the Parts and any other components of the Equipment at all reasonable times and places to verify compliance with this Purchase Agreement and standards of good workmanship.

4.2 Seller shall provide safe facilities for inspection of the Equipment and/or of the Parts or any other components of the Equipment in the field, at shops, or at any other place where relevant materials are in preparation, testing, manufacture, treatment or storage.

4.3 Upon delivery of the Equipment to the Delivery Location, Purchaser and Seller shall, according to mutually agreed procedures and during a mutually agreed upon period (the "Inspection Period"), inspect the Equipment for damage.

4.4 Purchaser, at its sole option, may reject all or any portion of the Equipment during the Inspection Period if it determines the Equipment is nonconforming or defective.

4.5 If the Equipment or any Part or other component of the Equipment has been rejected by Purchaser during the Inspection Period as defective or in any way failing to conform to this Purchase Agreement and Purchaser requires replacement of such defective item, Seller shall, at its expense, promptly replace the nonconforming item and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Equipment or components thereof. If Seller fails to timely deliver replacement Equipment, Purchaser may replace them with items from a third party and charge Seller the cost thereof and/or have the right to deduct these costs from the final payment.

4.6 All inspections, tests or any other action by Purchaser are for the benefit of Purchaser and shall not (a) relieve Seller of responsibility for providing its own quality control measures to assure that the Equipment complies with this Purchase Agreement or (b) reduce or otherwise affect any other obligations of Seller under this Purchase Agreement. For the avoidance of doubt, Purchaser shall have the right to conduct further inspections after Seller has carried out its remedial actions, even if such further inspections take place after expiration of the Inspection Period.

Initials:   *HI*

**PURCHASE AGREEMENT**  
**Between American Combustion Technologies, Inc. and CH2E Nevada LLC**  
**For two (2) 75 tons per day Tires Pyrolysis Systems**

**SCHEDULE I**



*American Combustion Tech, Inc.*

**Seller's Patents**

Patent Application Publication, dated January 28, 2012, US 2010/0018116A1

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NEW YORK 863382

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# **EXHIBIT B**

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5 Roger P. Thomasch  
6 Gregory P. Szewczyk  
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7 1225 17th Street, Suite 2300  
Denver, Colorado 80202-5596  
8 Telephone: 303.292.2400  
Facsimile: 303.296.3956  
9 thomasch@ballardspahr.com  
szewczykkg@ballardspahr.com

10 Attorneys for Plaintiff

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 CH2E NEVADA, LLC, a Nevada limited liability company, )  
14 ) Case No. 2:15-cv-00694-JCM-NJK  
15 Plaintiff, )  
16 v. ) **PLAINTIFF’S FIRST SET OF**  
17 ) **DOCUMENT REQUESTS TO**  
18 ) **DEFENDANT ACTI**  
19 LATIF MAHJOOB, an individual; AMERICAN )  
COMBUSTION TECHNOLOGY )  
20 INCORPORATED, a California corporation; )  
DOES 1-X; and ROE COMPANIES XI-XX, )  
21 inclusive, )  
Defendants. )

22 Pursuant to Federal Rule of Civil Procedure 24, Plaintiff CH2E Nevada, LLC, by and  
23 through undersigned counsel, BALLARD SPAHR LLP, hereby submits the following First Set of  
24 Document Requests (the “Requests”) to Defendant American Combustion Technology  
25 Incorporated (“ACTI”), and requests that ACTI produce the documents described herein, within  
26 thirty (30) days of service of these requests, in accordance with the Court’s Joint Discovery Plan  
27 and Scheduling Order entered by this Court on June 26, 2015. (ECF No. 20.)

28 1. “CH2E” means Plaintiff CH2E Nevada, LLC, or any person acting on CH2E’s

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1 behalf, including, but not limited to, its agents, servants, employees, members, managers,  
2 officers, independent contractors and attorneys.

3 2. "ACTI," "You" and "Your" means Defendant American Combustion Technology  
4 Incorporated or any other person acting on ACTI's behalf, including, but not limited to, its  
5 agents, servants, employees, managers, officers, board of directors, owners, independent  
6 contractors and attorneys.

7 3. "Complaint" means CH2E's Complaint and Jury Demand in this action, filed on  
8 March 19, 2015 in Nevada District Court, Clark County, No. A-15-715575-B, removed to the  
9 United States District Court for the District of Nevada, No. 2:15-cv-00694-JCM-NJK.

10 4. "Agreement" means the Purchase Agreement dated August 30, 2012 entered into  
11 by CH2E and ACTI, which is attached to the Complaint as Exhibit A.

12 5. "Equipment" means the machinery, equipment, technologies and systems as  
13 defined in Recital B in the Agreement.

14 6. "Other Equipment" means any other machinery, equipment, technologies or  
15 systems designed and/or manufactured by ACTI which produces energy commodities from  
16 renewable resources.

17 7. "Feedstock" means the type of material processed by ACTI's Equipment or Other  
18 Equipment.

19 8. "Throughput" means the processing capacity of ACTI's Equipment or Other  
20 Equipment, measured in tons of Feedstock per hour.

21 9. "Pre-Agreement" means any time prior to August 30, 2012.

22 10. "Document" or "Documents" means any written, recorded or graphic material in  
23 Your possession, custody or control, regardless of its location, whether produced, reproduced, or  
24 on paper, cards, tapes, film, electronic facsimile, computer storage devices or any other media,  
25 and shall include, without limitation, all correspondence, notes, memoranda, tapes, contracts,  
26 certificates, computer tapes, cards and disks, electronic mail, text messages, internet postings,  
27 minutes, records, diaries, logs, books, journals, bookkeeping entries, financial statements, tax  
28 returns, invoices, checks, canceled checks, drafts, promissory notes, money orders, negotiable



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1 instruments, letters of credit, books of account, diaries, pay stubs, expense vouchers, bank  
2 statements, telephone reports, analyses, lab books, test results, studies, drawings, charts,  
3 photographs, films, videotapes, pamphlets, periodicals, appointment calendars, cables, wires,  
4 telegrams, telexes, records and recordings of oral conversations, work papers, and any non-  
5 identical copies of any document, including drafts, postscripts, addenda, changed versions and  
6 copies of originals on which any notation has been made, and includes all such documents in  
7 Your possession, custody or control or in the possession, custody or control of Your present or  
8 former agents, representatives or attorneys or any and all persons acting on their behalf,  
9 including documents at any time in the possession, custody or control of such individuals or  
10 entities known by You to exist.

11 11. “Communication” or “communications” means every manner or means of  
12 disclosure, transfer, or exchange of information, whether oral, electronic, by document, or  
13 otherwise.

14 12. “Person” means any natural person, partnership, joint venture, cooperative, or  
15 unincorporated association, public or private corporation, public entity or other entity, or any  
16 affiliate, officer, director, employee, agent, representative or attorney of any of the foregoing.

17 13. “Relate to” or “relating to” means in connection with, describing, discussing,  
18 explaining, analyzing, reflecting, summarizing, evidencing, embodying, constituting,  
19 comprising, or in any way pertaining in whole or in part, directly or indirectly, to the subject  
20 matter of the Request.

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**INSTRUCTIONS**

1  
2 1. You are to produce all non-identical originals, drafts, copies, and photocopies of  
3 the Documents requested. A Document shall be deemed identical to another copy or version of  
4 the same Document only if it bears, contains, or includes no writing, signatures, names, notes,  
5 marks, words, letters, numbers, signs, stamps, symbols, sounds, or combinations thereof different  
6 from those of the other copy of version.

7 2. Each Request contained herein extends to all Documents in the possession,  
8 custody or control of You and/or anyone acting on Your behalf. A Document is deemed to be in  
9 Your possession, custody or control if it is in Your physical custody, or if it is in the physical  
10 custody of any other Person and You: (1) own such Document on any terms; (2) have an  
11 understanding, express or implied, that You may use, inspect, examine or copy such Document  
12 on any terms; or (3) have, as a practical matter, been able to use, inspect, examine, or copy such  
13 Document when You sought to do so. If any Document was ever, but no longer is, in Your  
14 possession, custody or control, state what disposition was made of such Document and when.

15 3. All Documents shall be produced in accordance with the Joint Discovery Plan and  
16 Scheduling Order entered by this Court on June 26, 2015. (ECF No. 20.) Where reasonably  
17 practicable, please produce Documents in a manner as will facilitate their identification with the  
18 particular Request(s) to which they are responsive.

19 4. If any Document is withheld because a privilege is claimed, identify each such  
20 Document (by date, title, author, addressees, Persons copied, number of pages, and subject  
21 matter), the number of the Request that calls for its production, the privilege claimed, and  
22 whether any non-privileged or non-protected matter is included in the Document.

23 5. These Requests shall be deemed continuing so as to require further and  
24 supplementary production promptly if You receive, generate, or discovery additional Documents  
25 called for herein between the time of original production and the time of any evidentiary hearing  
26 or trial.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1**

All communications between ACTI and CH2E relating to the Equipment, including, but not limited to:

- (a) Pre-Agreement communications relating to the expected Throughput for the Equipment;
- (b) Communications relating to delivery and installation of the Equipment;
- (c) Communications regarding training of CH2E personnel;
- (d) Communications relating to problems with the operation or performance of the Equipment; and
- (e) Communications regarding attempts to remedy or fix problems with the operation or performance of the Equipment.

**REQUEST NO. 2**

All internal ACTI communications relating to the Equipment, including, but not limited to:

- (a) Pre-Agreement communications relating to the expected Throughput for the Equipment;
- (b) Communications relating to delivery and installation of the Equipment;
- (c) Communications regarding training of CH2E personnel;
- (d) Communications relating to problems with the operation or performance of the Equipment; and
- (e) Communications regarding attempts to remedy or fix problems with the operation or performance of the Equipment.

**REQUEST NO. 3**

All communications between ACTI and any third party relating to the Equipment, including, but not limited to:

- (a) Pre-Agreement communications relating to the expected Throughput for the Equipment;

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- 1 (b) Communications relating to delivery and installation of the Equipment;
- 2 (c) Communications regarding training of CH2E personnel;
- 3 (d) Communications relating to problems with the operation or performance of the
- 4 Equipment; and
- 5 (e) Communications regarding attempts to remedy or fix problems with the operation
- 6 or performance of the Equipment.

7 **REQUEST NO. 4**

8 All blueprints, drawings, operating manuals, operating specifications or operating

9 parameters relating to the Equipment or the design of the Equipment, including all drafts,

10 versions and copies containing notations. This Request includes, but is not limited to, the

11 operation manual required by Section 4 of Exhibit A to the Agreement at page 10 of 20.

12 **REQUEST NO. 5**

13 All training manuals or other training materials relating to the Equipment or the design of

14 the Equipment, including all drafts, versions and copies containing notations. This Request

15 includes, but is not limited to, the training materials required by Section 3 of Exhibit A to the

16 Agreement at page 9 of 20.

17 **REQUEST NO. 6**

18 All Documents relating to Pre-Agreement testing of any prototypes of the Equipment,

19 electronic simulations of the Equipment, or any computer program which tested the design of the

20 Equipment in any way.

21 **REQUEST NO. 7**

22 All Documents relating to testing of the Equipment, including, but not limited to, testing

23 performed prior to delivery and installation, testing performed during installation, or testing as

24 installed.

25 **REQUEST NO. 8**

26 All Documents relating to ACTI's Pre-Agreement expectations or beliefs relating to the

27 Throughput of the Equipment.

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1     **REQUEST NO. 9**

2             All Documents relating to the design of Other Equipment which uses rubber as  
3     Feedstock.

4     **REQUEST NO. 10**

5             All Documents relating to the Throughput of Other Equipment which uses rubber as  
6     Feedstock.

7     **REQUEST NO. 11**

8             All Documents relating to the design of Other Equipment upon which ACTI relied in  
9     performing the empirical analysis referenced in Section 11.1.13 of Exhibit A to the Agreement at  
10    page 15 of 20 of the Agreement.

11    **REQUEST NO. 12**

12            All Documents relating the Throughput of Other Equipment upon which ACTI relied in  
13    performing the empirical analysis referenced in Section 11.1.13 of Exhibit A to the Agreement at  
14    page 15 of 20 of the Agreement.

15    **REQUEST NO. 13**

16            All Documents relating to the results of the empirical analysis referenced in Section  
17    11.1.13 of Exhibit A to the Agreement at page 15 of 20 of the Agreement.

18    **REQUEST NO. 14**

19            All Documents relating to the training required by Section 3.3 of Exhibit A to the  
20    Agreement on page 9 of 20, including, but not limited to, any training manuals, operating  
21    materials, operating parameters or software manuals, and all communications relating to the  
22    training required by Section 3.3 of Exhibit A to the Agreement on page 9 of 20.

23    **REQUEST NO. 15**

24            All Documents relating to the Installation Acceptance Report and the Start-Up and  
25    Training Report required by Section 3.4 of Exhibit A to the Agreement on page 9 of 20,  
26    including all drafts, versions and copies containing notations, and all communications relating to  
27    the Installation Acceptance Report and the Start-Up and Training Report.

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**REQUEST NO. 16**

A copy of all insurance policies held ACTI which may be used to satisfy all or part of a possible judgment in this Action or to indemnify or reimburse ACTI or any ACTI employee, officer or director for payments made to satisfy a possible judgment in this Action.

**REQUEST NO. 17**

All financial statements from ACTI that relate to or reflect income from the sale of the Equipment.

**REQUEST NO. 18**

Documents relating to or reflecting all commissions or compensation paid by ACTI to any ACTI employee, officer or director relating to the sale of the Equipment.

**REQUEST NO. 19**

All photographs of the Equipment, including pre-Agreement photographs, photographs taken during installation, and photographs of the Equipment as installed.

**REQUEST NO. 20**

All change orders received by ACTI from CH2E.

**REQUEST NO. 21**

Records of all payments made by CH2E to ACTI relating to the Agreement or the Equipment.

1 Dated: July 16, 2015.

2 BALLARD SPAHR LLP

3  
4 /s/ Roger P. Thomasch

5 Abran E. Vigil  
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7 100 North City Parkway, Suite 1750  
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9 Roger P. Thomasch  
10 Gregory P. Szewczyk  
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12 Denver, Colorado 80202-5596

13 *Attorneys for Plaintiff CH2E Nevada, LLC*

14  
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**CERTIFICATE OF SERVICE**

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I hereby certify that on the 16th day of July 2015, and pursuant to Fed. R. Civ. P. 5(b), a true and correct copy of the foregoing **PLAINTIFF’S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT ACTI** was served via email to the following:

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s/CM Rowe

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