

**From:** Priscilla Burton  
**To:** OGMCOAL  
**Date:** 12/9/2010 3:24 PM  
**Subject:** 007001 White Oak Fwd: State of Utah Purchase Order PO 560 12000000007 Change Order 2  
**Attachments:** PO 560 12000000007 CO 2.PDF; Terms and Conditions - Purchase Order - 4 June 2009.DOC

>>> Sue Hoskins Tuesday, December 07, 2010 10:15 AM >>>

To: Innovative Excavation Inc.  
Attn: W. Wayne McCandless

Please find attached your copy of the purchase order, including terms and conditions.

This message is sent out by the Division of Purchasing on behalf of the State Agency listed on the "Bill To" section of the order. If you have any questions regarding this purchase, please contact the person named on the order.



# STATE OF UTAH

## Purchase Order

Bill To:  
STATE OF UTAH  
Natural Res-Oil Gas & Mining

1594 W NORTH TEMPLE STE 1210  
PO BOX 145801  
Salt Lake City UT 84114-5801

Vendor Number: VC0000148289  
Innovative Excavation Inc  
PO Box 818  
West Jordan UT 84084

Date Of Order: 12/07/10  
Date Required:  
FOB: FOB Dest, Freight  
Prepaid

THIS NUMBER MUST APPEAR ON ALL  
INVOICES, PACKING LISTS, PACKAGE  
LABELS AND BILLS OF LADING.  
**PURCHASE ORDER NUMBER**  
PO 560 12000000007  
Version: 4

Solicitation Number : AR11035

For Questions Contact: Priscilla Burton 435-613-3733

**Grand Total:** \$277,791.75

Item	Quantity	Unit	Description	Warehouse	Unit Price	Amount
1	0.0		Provide all labor, materials, and equipment to perform mine reclamation construction at the White Mine Site per the terms and conditions, including specifications, contained in Bid #AR11035.  100% Performance and Payment Bonds Required.  If you have any questions please contact Priscilla Burton at 435-613-3733.  Reference RQS 560 12000000003  *****Change Order 1***** Take away 10 ac -\$9,500.00, 500 pounds/ac bonded fiber mulch.  Add 20 ac \$40,700.00, 1500 pounds/ac woodfiber mulch.		\$0.00	\$277,791.75

### NOTICE

Invoices which exceed unit price listed above will not be paid.  
Prices are F.O.B Destination, Freight Prepaid, unless otherwise indicated on this order.  
Invoice items in the order they appear above.  
Utah's tax exempt number is 11736850-010-STC.  
Send 2 copies of your invoice to insure proper payment.  
Attached Terms and Conditions apply to this Purchase Order.

\_\_\_\_\_  
Authorized Signature



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## Purchase Order

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STATE OF UTAH  
Natural Res-Oil Gas & Mining

Date Of Order: 12/07/10  
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**PURCHASE ORDER NUMBER**

1594 W NORTH TEMPLE STE 1210  
PO BOX 145801  
Salt Lake City UT 84114-5801

PO 560 1200000007  
Version: 4

Vendor Number: VC0000148289  
Innovative Excavation Inc  
PO Box 818  
  
West Jordan UT 84084

Solicitation Number : AR11035

**Grand Total:** \$277,791.75

Item	Quantity	Unit	Description	Warehouse	Unit Price	Amount
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Take away 40 tons -\$14,000 reduce application  
to IT/a@20a

Total for change order \$17,200.00

Total for Purchase Order \$274,508.75  
\*\*\*\*\*End Change Order 1\*\*\*\*\*

\*\*\*\*\*Change Order 2\*\*\*\*\*

-9 each @ \$2,035.00 for a total amount of  
-\$18,315.00 Reduce Quantity of Hydro Mulch

3 each @ \$230.00 for a total of \$690.00  
Tritacale - Applied at 60 LBS/AC

4 each @ \$1,380.00 for a total of \$5,520.00 Bio  
Sol Application

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\_\_\_\_\_  
Authorized Signature



# STATE OF UTAH

## Purchase Order

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 STATE OF UTAH  
 Natural Res-Oil Gas & Mining  
  
 1594 W NORTH TEMPLE STE 1210  
 PO BOX 145801  
 Salt Lake City UT 84114-5801

Date Of Order: 12/07/10  
 Date Required:  
 FOB: FOB Dest, Freight  
 Prepaid

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 LABELS AND BILLS OF LADING.  
**PURCHASE ORDER NUMBER**  
 PO 560 12000000007  
 Version: 4

Vendor Number: VC0000148289  
 Innovative Excavation Inc  
 PO Box 818  
  
 West Jordan UT 84084

Solicitation Number : AR11035

**Grand Total:** \$277,791.75

Item	Quantity	Unit	Description	Warehouse	Unit Price	Amount
	7	each	@ \$2,500.00 for a total of \$17,500.00 Increase area of surface roughening (excavator gouging)			
	1	each	@ -\$2,112.00 Line Item 15 - Credit for Balance Remaining			
Grand Total = \$3,283.00						
Total for Purchase Order \$277,791.75						
*****End Change Order 2*****						

**Ship To:**  
 STATE OF UTAH  
 Natural Res-Oil Gas & Mining  
  
 1594 W NORTH TEMPLE STE 1210  
  
 Salt Lake City UT 84114-5801

### NOTICE

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 Prices are F.O.B Destination, Freight Prepaid, unless otherwise indicated on this order.  
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 Send 2 copies of your invoice to insure proper payment.  
 Attached Terms and Conditions apply to this Purchase Order.

*[Signature]* 12/7/2010  
 Authorized Signature

## STATE OF UTAH • DIVISION OF PURCHASING

3150 State Office Building, Salt Lake City, Utah 84114-1061 Telephone (801) 538-3026, Fax (801) 538-3882

### PURCHASE ORDER CONTRACT: TERMS AND CONDITIONS

ACCEPTANCE OF THIS PURCHASE ORDER BINDS THE CONTRACTOR TO ALL THESE TERMS AND CONDITIONS AND ALL THE TERMS, CONDITIONS AND PROVISIONS INCLUDED IN THE SOLICITATION THE DIVISION OF PURCHASING OFFERED RELATING TO THIS PURCHASE ORDER.

1. **AUTHORITY:** Provisions of this Purchase Order are pursuant to the authority set forth in the Utah Procurement Code, 63G-6, Utah Code Annotated (U.C.A.) 1953, as amended, and the Utah State Procurement Rules and Regulations. Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this Purchase Order shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Purchase Order or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this Contract for at least four years. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this Contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids nor to the Multi-Step Process.

#### 4.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with UCA Section 63G-11-103.

2. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

3. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.

4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-11-103.

#### 4.2 Indemnity Clause for Status Verification System

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

2. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

5. **CONFLICT OF INTEREST AND PROCUREMENT ETHICS:** The Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, U.C.A., 1953, as amended. Further, Contractor certifies that it has not offered or given any gift or compensation prohibited by 67-16-5, U.C.A., 1953, as amended, to any officer or employee of the State of Utah to secure favorable treatment with respect to being awarded this Purchase Order.

6. **INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

7. **INDEMNITY:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973; or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Contractor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

10. **CANCELLATION OR REVISION:** This Purchase Order may be changed, revised or canceled only by the Division of Purchasing giving written notice to the Contractor.

11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

13. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is **11736850-010-STC**. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless sales tax is included as a separate line item on this purchase order.

14. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

15. **PUBLIC INFORMATION:** Contractor agrees that the Purchase Order, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives the State express permission to make copies of the Purchase Order, related Sales Orders, Invoices, and the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

16. **DELIVERY:** Orders must be shipped directly to ordering agency at address specified. Shipments must be made in accordance with the item(s) as described and priced on this order. Also, orders must be shipped F.O.B. Destination, Freight Prepaid, unless other shipping instructions are described in this order. **UNLESS INDICATED OTHERWISE, ALL ORDERS MUST BE SHIPPED PROMPTLY (WITHIN 5 WORKING DAYS), UPON RECEIPT OF ORDER.** Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.

17. **PRICING AND INVOICING:** Prices to be paid for item(s) ordered are the prices listed on this Purchase Order, which include all shipping and delivery charges, unless otherwise described on this order. **CONTRACTOR WILL, AFTER DELIVERY, PROMPTLY SUBMIT A CORRECT INVOICE (WITHIN 30 DAYS OF SHIPMENT OR DELIVERY OF SERVICES) TO THE ORDERING AGENCY.** Contractor agrees that the state has a right to adjust or return any invoice that reflects incorrect pricing. The Purchase Order number shall be listed on all invoices, freight tickets, and correspondence relating to the Purchase Order. Unless otherwise specified, payment terms shall be Net 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. Where prompt payment discounts apply, the period for computing a discount shall begin on the date a correct invoice, including any adjustment for damage or incomplete shipment, is received by the state. Discount will be taken on the total amount of the invoice. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).

18. **PATENTS, COPYRIGHTS, ETC.:** The Contractor shall release, indemnify and hold the State, its officers, agents and

employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

19. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the Contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this Contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this Contract; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

20. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

21. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and expressly approved in writing by the State Director of Purchasing. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Additional Terms and Conditions; 3. Contractor Terms and Conditions, if applicable.

(Revision date: 4 June 2009)