

**STATE OF IDAHO**  
**DEPARTMENT OF LANDS**



**Nonfee Grazing Costs on Idaho State Lands**

**JOINT FUNDING AGREEMENT NO. 19-416**

**University of Wyoming**

STATE OF IDAHO  
DEPARTMENT OF LANDS  
JOINT FUNDING AGREEMENT No. 19-416

THIS AGREEMENT is by and between the STATE OF IDAHO, acting through the DEPARTMENT OF LANDS on behalf of the Idaho State Board of Land Commissioners, hereafter referred to as "IDL," and the University of Wyoming, hereafter referred to as "UWYO."

1. DEFINITIONS

- a. Agreement: This duly executed written agreement between IDL and UWYO, which shall include these Terms and Conditions, the associated Scope of Work, and all attachments thereto.
- b. Contracting Officer: the IDL employee with the authority to enter into, administer, modify, and/or terminate this Agreement, and make related determinations and findings.
- c. Contracting Officer Representative: The designated IDL representative, also referred to as "COR", who will be the primary point of contact for daily oversight of the Agreement and ensures UWYO fulfills its obligations as laid out in the Scope of Work. The COR cannot modify the stated terms of the Agreement unilaterally or direct UWYO to perform work not specified in the Agreement without the mutual consent of the parties, which will be memorialized by bilateral signatures.
- d. UWYO: The counterparty that has entered this Agreement to deliver the services according to the associated Scope of Work and not-to-exceed budget.
- e. IDL: The Idaho Department of Lands.
- f. Scope of Work: Detailed outline of the project description, methods utilized, project timeline, and deliverables.
- g. Services: Includes services performed, workmanship, and materials furnished or utilized in the performance of services, including any deliverables.
- h. State of Idaho Board of Land Commissioners or Land Board: The State Board of Land Commissioners (Land Board) is comprised of Idaho's Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and State Controller. The Land Board serve as the trustees for more than 2.4 million acres of state endowment trust lands in Idaho, with the IDL acting as the administrative arm of the Board, carrying out the executive directives necessary to meet the mandated Constitutional charge codified in Article IX Section 8 of the Idaho Constitution. The Land Board also oversees the work of the IDL in its regulatory and assistance duties, and in managing Idaho's public trust lands.

2. RESPONSIBILITY

UWYO hereby assumes responsibility for production and delivery of the report as outlined in this Agreement. UWYO (or its associated delegate) will be the sole point of contact on all matters relating to this Agreement, including payment of invoices received for work completed.

3. ANTIDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

Acceptance of this Agreement binds UWYO to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified

handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Act of 1990, are also incorporated into this contract. The Contractor must include this provision in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.

#### 4. RESTRICTIONS ON AND WARRANTIES – ILLEGAL ALIENS

UWYO warrants this Agreement is subject to Executive Order 2009-10 [[http://gov.idaho.gov/mediacenter/execorders/eo09/eo\\_2009\\_10.html](http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html)]; it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent (5%) of the Agreement price, per violation, and/or termination of its Agreement.

#### 5. INSURANCE REQUIREMENTS

- a. Prior to the commencement of Agreement activities, UWYO must present written proof of liability insurance, and automobile insurance that clearly validates coverage of all UWYO representatives that will be engaged in activities to produce deliverables under this Agreement. This proof of insurance shall clearly express that the state of Idaho, and by extension IDL, shall have no liability for UWYO's employees, contractors, subcontractors, or any other agent acting on its behalf to fulfill the terms of this Agreement. This Agreement shall not be considered a waiver of any applicable governmental immunity, including damage limitations, which UWYO may have under the Wyoming Governmental Claims Act.
- b. UWYO shall exonerate, defend, indemnify and hold the state of Idaho, and by extension IDL, harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, worker's compensation and income tax laws with respect to UWYO or UWYO's representatives engaged in performance under this Agreement. UWYO will maintain any applicable worker's compensation insurance as required by law and will provide a certificate of the same. There will be no exceptions made to this requirement and failure to provide a certificate of worker's compensation insurance may, at IDL's discretion, result in cancellation of the Agreement or in an invoice to UWYO to cover the IDL's cost of providing any necessary worker's compensation insurance. UWYO must provide either a certificate of worker's compensation insurance issued by a surety licensed to write worker's compensation insurance in the state of Idaho, as evidence that UWYO has in effect a current Idaho worker's compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission. For the purposes of this Agreement, IDL does not assume liability as an employer.

#### 6. TAXES

IDL is generally exempt from payment of Idaho State Sales and Use Tax for property purchased for its use under the authority of Idaho Code, Section 63-3622 as a government instrumentality. In addition, the State is generally exempt from payment of Federal Excise Tax under a permanent authority from the district Director of the Internal Revenue Service. Exemption certificates will be furnished upon written request by UWYO. If UWYO is required to pay any taxes incurred as a result of doing business with IDL, it shall be solely responsible for the payment of those taxes.

7. STATE OF WYOMING MINIMUM WAGE LAW

It will be the responsibility of UWYO to fully comply with 27-4-202 "Minimum Wage Rates", Wyoming Statute, as well as any applicable provisions of the Federal Fair Labor Standards Act (FLSA) regarding minimum wage.

8. ALLOCATION OF RISK

UWYO and IDL shall be responsible only for the acts, omissions or negligence of each respective party's own representatives (including, but not limited to: employees, agents, contractors and subcontractors). Nothing in this Agreement shall extend the tort responsibility or liability of the IDL beyond that required by the Idaho Tort Claims Act, Idaho Code section 6-901 *et seq.* Each party shall be responsible for damage to property caused by its representatives in the performance of the Agreement. If a property claim or damage is not covered by the party's self-insurance or other property coverage, the responsible party shall pay the costs arising from such claim or damage. If a claim or damage arises from more than one party's performance of the Agreement or is not allocable to any party, each party shall pay the costs to such party arising from the claim or damage.

9. OFFICIALS, AGENTS AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE

In no event shall any official, officer, employee or agent of the state of Idaho, and by extension IDL, be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation or outside the terms of this Agreement.

10. SAFETY INFORMATION

- a. UWYO assumes full responsibility for the safety of its employees, equipment and supplies.
- b. UWYO guarantees that all items it provides in performance of this Agreement meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.

11. USE OF THE IDAHO DEPARTMENT OF LANDS NAME

UWYO agrees that it will not, prior to, in the course of, or after performance under this Agreement, use the state of Idaho's name, and by extension IDL's name, any advertising or promotional media as a customer or client of UWYO without the prior written consent of IDL.

12. AGREEMENT TERMINATION

- a. **TERMINATION FOR CONVENIENCE**
  1. UWYO or IDL may terminate the Agreement for its convenience in whole or in part, with fifteen (15) business days' written notice, if either party determines termination of the Agreement to be in its best interest.
  2. After notice of termination for convenience, both parties shall immediately proceed with the following obligations pursuant to this Agreement:
    - a. Stop work.
    - b. Place no further orders for materials, services, or facilities.
    - c. Terminate all subcontracts pursuant to the delivery of services under this

Agreement.

- d. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
3. Upon termination for convenience, if UWYO and IDL fail to agree on the amount to be paid to UWYO to close out the Agreement, IDL will pay UWYO the following amounts; provided that in no event will total payments exceed the amount payable to UWYO if the Agreement had been fully performed:
  - a. The Agreement price for deliverables or services accepted by IDL and not previously paid for; and
  - b. The total of:
    - i. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to deliverables or services paid or to be paid;
    - ii. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and
    - iii. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by UWYO in winding down and terminating its work.
4. UWYO will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

b. **TERMINATION FOR FISCAL NECESSITY**

IDL is a government entity and it is understood and agreed that IDL's payments herein provided for shall be paid from Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this Agreement. This Agreement shall in no way or manner be construed so as to bind or obligate the state of Idaho, and by extension IDL, beyond the term of any particular appropriation of funds by the Legislature as may exist from time to time. IDL reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for IDL to continue such payments, or requires any return or "give-back" of funds required for IDL to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the state of Idaho discontinues or makes a material alteration of the program under which funds were provided. The state of Idaho shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to UWYO. Further, in the event of non-appropriation, the state of Idaho, and by extension IDL, shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

13. **AGREEMENT ADMINISTRATION**

- a. The COR will work closely with UWYO to ensure the Agreement is fulfilled.
- b. The COR will be responsible for the following:

- (1) Working with UWYO to ensure the work performed and the report produced by UWYO meet the requirements as outlined in the Agreement.
- (2) Make recommendations for payment of (the) invoice(s) received from UWYO.

14. FORCE MAJEURE

Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases UWYO shall notify IDL promptly in writing of any cause for delay and IDL concurs that the delay was beyond the control and without the fault or negligence of UWYO. If reasonably possible, UWYO shall make every reasonable effort to complete the deliverables as outlined in the Agreement as soon as possible. Matters of UWYO's or its representatives' finances shall not be a Force Majeure.

15. MODIFICATION

This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each party.

16. ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties with respect to the subject matter hereof. Where terms and conditions specified in UWYO's scope of work differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each party.

17. PUBLIC RECORDS

Pursuant to Idaho Code Section 74-101 through 74-126, information or documents received from UWYO may be open to public inspection and copying unless exempt from disclosure. UWYO shall clearly designate individual documents as "exempt from disclosure" on each page of such documents and shall indicate the basis for such exemption. IDL cannot accept the marking of an entire document as exempt from disclosure. In addition, IDL cannot accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. UWYO shall indemnify and defend the state of Idaho, and by extension IDL, against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for UWYO's failure to designate individual documents as exempt from disclosure. UWYO's failure to designate as exempt any document or portion of a document that is released by IDL shall constitute a complete waiver of any and all claims for damages caused by any such release. If IDL receives a request for materials claimed exempt from disclosure by UWYO, UWYO shall provide the legal defense for such claim.

18. CONFIDENTIAL INFORMATION

Pursuant to this Agreement, UWYO may collect, or IDL may disclose to UWYO, financial, personnel or other information that IDL regards as proprietary, confidential or exempt from disclosure ("Confidential Information"). Confidential Information shall belong solely to IDL. UWYO shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose any Confidential Information to any third party, except with IDL's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction, and then only upon timely notice to IDL. IDL may require UWYO's representatives separately agree in writing to the obligations contained in this section or sign a separate confidentiality agreement. Confidential Information shall be returned to IDL upon termination of this Agreement. The confidentiality obligation

contained in this section shall survive termination of this Agreement. Confidential Information shall not include data or information that:

- a. Is or was in the possession of UWYO before being furnished by IDL, provided that such information or other data is not known by UWYO to be subject to another confidentiality agreement with or other obligation of confidentiality to the state of Idaho, and by extension IDL;
- b. Becomes generally available to the public other than as a result of disclosure by UWYO; or
- c. Becomes available to UWYO on a non-confidential basis from a source other than IDL, provided that such source is not known by UWYO to be subject to a confidentiality agreement with or other obligation of confidentiality to the state of Idaho, and by extension IDL.

19. NON-WAIVER

The failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

20. NO WAIVER OF SOVEREIGN IMMUNITY

In no event shall this Agreement or any act by IDL, be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the State. This section applies to a claim brought against the state of Idaho only to the extent Congress has appropriately abrogated the state of Idaho's sovereign immunity and is not consent by the state of Idaho to be sued in federal court, or a waiver of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States. Additionally, UWYO does not waive its sovereign immunity or its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. Any actions or claims against UWYO under this Agreement must be in accordance with and are controlled by the Wyoming Governmental Claims Act, W.S. 1-39-101 et seq. (1977) as amended.

21. ATTORNEYS' FEES

In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith in addition to any other available remedies.

22. EXAMINATION AND AUDIT

UWYO agrees that IDL or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Agreement. UWYO agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. UWYO agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, UWYO agrees to include a similar right of IDL to audit records and interview staff in any subcontract related to performance of this Agreement.

23. PAYMENT

Payment will be made in accordance with Idaho Code 67-2302 according to the budget described in the Scope of Work and after receipt of UWYO's itemized invoice for satisfactorily completed work. Total payments under this Agreement shall not exceed \$28,050.00.

It is expected UWYO will submit monthly invoices to the COR, which will be reviewed and if acceptable, approved for payment. Monthly invoices shall be submitted to the COR:

Jason Laney at [JLaney@idl.idaho.gov](mailto:JLaney@idl.idaho.gov)  
Invoices may also be submitted by mail to:

Idaho Department of Lands  
Attn: Jason Laney  
PO Box 83720  
Boise, ID 83720-0050

It is understood that full payment for all services provided under the Agreement is based on the associated project budget and will not deviate from that amount unless modified by an instrument in writing signed by a duly authorized representative of each party.

24. AGREEMENT TERM

This Agreement will become effective once signed by all parties. UWYO and the COR will discuss the Agreement terms following execution of the Agreement. The Agreement will terminate December 31, 2019 or at final acceptance of the final report as outlined in the associated Scope of Work, unless terminated earlier by the State under any of the provisions provided by this Agreement. The Agreement may be extended prior to the expiration details included above by an instrument in writing signed by a duly authorized representative of each party.

The proposed timeline for Agreement activities has been included in the associated Scope of Work but may be revised by the COR to accommodate any unplanned delays to allow for completion of the deliverables; in so far as the COR's revision to the timeline does not exceed the expiration details included above.

25. SIGNATURE BLOCK


**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed

effective this 6th day of March, 2019, in Boise, Idaho.

IDAHO DEPARTMENT OF LANDS

UNIVERSITY OF WYOMING

By   
Andrew Eugene Evans

By   
Diana G. Hulme,

Title Procurement Manager

Title Associate Vice President for Research

83-6000331  
FEIN Number



**Idaho Department of Lands  
Joint Funding Agreement 19-416  
Nonfee Grazing Costs on Idaho State Lands  
Scope of Work**

**Project Leads: Kristie Maczko and John Tanaka**

Primary Contact Information:  
Kristie Maczko  
[kmaczko@uwyo.edu](mailto:kmaczko@uwyo.edu)  
970-222-1314

Secondary Contact Information:  
John Tanaka  
[itanaka@uwyo.edu](mailto:itanaka@uwyo.edu)  
307-766-5130

**Approved UWYO Signatory: Diana Hulme**

Contact Information:  
Diana Hulme, Associate Vice President for Research  
Office of Research  
Dept. 3355  
1000 E. University Avenue  
Laramie, WY 82071-2000  
307-766-5320  
[dhulme@uwyo.edu](mailto:dhulme@uwyo.edu)

**Idaho Department of Lands Contracting Officer Representative: Jason Laney**

Contact Information:  
Jason Laney  
[JLaney@idl.idaho.gov](mailto:JLaney@idl.idaho.gov)  
208-334-0278

**Purpose**

The objective of this study is to quantify an estimate of the nonfee costs of grazing livestock on Idaho Department of Lands (IDL) lease lands. This project is being done in collaboration with a project funded by the Public Lands Council Endowment Trust (PLCET) to estimate nonfee costs on lands managed by the Bureau of Land Management and the U.S. Forest Service.

For this project, we understand that there are IDL lessees that operate both with and without federal permits. We will first draw our sample of federal land permittees and determine how many of those also have IDL leases. We will draw additional IDL lessees to ensure we have enough respondents to meet a 95% confidence level with a 10% margin of error. If there are 800 lessees with IDL leases, this would be 86 respondents needed.

We will retain the services of a former BLM and Forest Service employee from Portland who has worked with us on other projects. He will work closely with the graduate student and will attend some of the rancher interviews where state land is involved. However, he would conduct the majority of state land lessee interviews (those not within a federal permit) on his own.

## Methods

A short questionnaire will be developed to collect information from Idaho state land lessees. We will work collaboratively with IDL on the questionnaire. Once the questionnaire is developed, we will submit our protocol to the University of Wyoming Institutional Review Board for approval to conduct research with human subjects.

For the federal permits, to the extent possible, we are targeting ranches that participated in the 1992 Grazing Fee Study. Once those are known, the PLCET study will randomly select other ranchers with federal permits to interview to get the desired number of respondents. We will compare both lists to the IDL lessee list to determine how many will be included in that study. We will then select enough IDL lessees from the list that only have IDL leases to get to the desired number of interviews.

The interview protocol will be developed and approved by the UW IRB. Our intention is to work with IDL to write a letter of introduction that will be mailed to selected ranchers. Our researchers will follow up with a phone call, talk about data needs, and attempt to set up an interview time. We expect each interview to take no longer than an hour if the ranch has the information ready. We will work with the rancher to extract the information we need out of the data they may have.

Following the completion of the interviews and data collection, a draft summary report for IDL lands will be prepared. The report will show the average nonfee costs experienced by IDL lessees on state lands. We intend to follow the analysis methods used in the 1992 Grazing Fee Study which followed the 1966 Grazing Fee Study that was originally used to set the federal grazing fee, to the extent possible. The final report will also discuss differences among nonfee costs on federal, state, and private leased lands. This final peer-reviewed report will draw on information collected for the PLCET project.

## Timeline

February 2019	Initiate project, IRB training
March 2019	Develop questionnaire, hire interviewer, select interview sample and make initial contact, begin setting up interviews
April-June 2019	Conduct interviews
July 2019	Develop initial report with IDL results
August 2019	Develop the final report and deliver to IDL

## Budget

Graduate Student	2 weeks (stipend, health insurance, tuition/fees)	\$1,000
Contract employee	6 weeks service	\$6,000
Kristie Maczko, SRR ED	2 week (salary, fringe)	\$5,500
John Tanaka	As needed	\$0
Travel	4 person-trips to Idaho for PIs	\$4,000
Travel for interviews	6 weeks	<u>\$9,000</u>
Total Direct Costs		\$25,500
Indirect Costs (10%, pursuant to IDL's NICRA)		<u>\$2,550</u>
<b>Total Costs</b>		<b>\$28,050</b>