



### Tooele County Council Agenda Item Summary

**Department Making Request:**

County Attorney

**Meeting Date:**

April 5, 2022

**Mark Options That Apply:**

**Grant**  
*1 time*

**Contract**  
*1 yr. or less*

**Purchase**

*Exp date: \_\_\_\_\_*

**Grant**  
*With County Match*

**Contract**  
*More than 1 yr.*  
*Exp date: 11/30/2026*

**Budget Impact:**

**In Budget**

**Over Budget**

**Requested Amount: \$ 103,296 per year**

**Item Title:** Operating and Maintenance Agreement - Utah State Courts and Tooele County

*Please answer the who? what? when? why?*

This is the current five-year renewal of the operating and maintenance agreement for the Gordon R. Hall Courthouse. Prior versions of this agreement have been in place since 2006. The agreement assigns specified duties to the county (parking lot maintenance and certain snow removal) and other duties to the state (interior janitorial and other snow removal). The parties then invoice each other based on their respective percentages of ownership (the state owns 68% and the county owns 32%). The county has not historically billed the state, but has the right to do so.

**List who needs copies when approved:** Clerk, Attorney, Auditor, State Court Administrator



# Operating and Maintenance Agreement

## Utah State Courts and Tooele County

THIS AGREEMENT, made and entered into this 1st day of December 2021, by and between Tooele County (hereinafter known as COUNTY) and the State of Utah Administrative Office of the Courts (hereinafter known as STATE), is intended to specify the shared and individual responsibilities of COUNTY and STATE relative to the operation and maintenance of the building and grounds known as the TOOEELE COURTS COMPLEX.

NOW WHEREAS COUNTY AND STATE are joint owners of the real property known as the TOOEELE COURTS COMPLEX located at 74 South 100 East, Tooele, Utah; and, WHEREAS COUNTY and STATE are desirous of defining their respective obligations to operate and maintain said COMPLEX, the following terms and conditions are set forth.

### I. GROUNDS OPERATIONS AND MAINTENANCE

The COUNTY shall have the following duties with respect to the maintenance and operation of the grounds and parking lots assigned to the TOOEELE COURTS COMPLEX as follows. The COUNTY will bill the STATE for 68% of the cost of these services pursuant to Exhibit A of this agreement.

- A. COUNTY shall be responsible for all snow removal in all parking lots (private and public) that have been constructed as part of the TOOEELE COURTS COMPLEX. All such snow removal shall be done within a reasonable amount of time following each snow event, and shall continue on a regular basis to insure employee and public access to the COMPLEX each business day. COUNTY may call upon State Division of Facilities Construction Management (DFCM) to assist in such snow removal. If snow is not removed by 8:00 AM following each snow event DFCM may provide this service by giving notice to COUNTY.
- B. COUNTY shall be responsible for all snow removal on all street-side sidewalks around the TOOEELE COURTS COMPLEX. COUNTY shall remove the snow in a timely manner following each snow event, or may call upon DFCM to provide this service at those times when COUNTY cannot remove snow in a timely manner. Snow shall be removed to not inhibit public access to the COMPLEX, and to prevent claims against the COUNTY or the STATE for accidents that may occur incidental to un-removed snow or melted snow. COUNTY shall treat sidewalks with appropriate amount of a snowmelt product to keep sidewalks from being slippery. Such snowmelt shall be of a non-abrasive type to prevent concrete damage.

- C. COUNTY shall take primary responsibility to provide parking lot maintenance to all parking areas public and private that are part of the TOOEELE COURT COMPLEX. Such maintenance shall include all necessary repairs and patching to damaged areas. COUNTY shall coordinate with DFCM on the most cost effective repair and maintenance program. Repaving shall take place as agreed upon by DFCM and COUNTY; both parties shall develop a repaving schedule that will allow COUNTY and STATE to acquire funding in advance.

The STATE through DFCM shall have the following responsibilities with respect to the grounds and parking lot defined as part of the TOOEELE COURTS COMPLEX. The STATE will bill the COUNTY for 32% of the cost for these services pursuant to Exhibit A of this Agreement.

- A. DFCM shall provide all maintenance including upkeep and replacement of the landscaping that is part of the TOOEELE COURTS COMPLEX. DFCM shall insure that plants are watered and maintained to insure the COMPLEX retains a first class appearance. Lawns and plants will be cut, pruned, or trimmed on a regular schedule to avoid any unsightly appearance.
- B. DFCM shall be responsible for all snow removal on non-street-side sidewalks that were constructed as part of the TOOEELE COURTS COMPLEX. Such snow removal shall occur by 7:00 AM following a snow event. Maintenance of these sidewalks including application of a snowmelt product that will avoid damaging the concrete shall be the responsibility of DFCM.

## II UTILITY AND JANITORIAL EXPENSES

- A. The STATE shall be responsible for payment of all Courthouse utility and janitorial expenses. DFCM will bill the STATE quarterly for these expenses. The STATE will subsequently bill the COUNTY for the COUNTY'S proportional share of utility and janitorial expenses.
- B. Exhibit A to this Agreement, which illustrates the STATE and COUNTY allocation of building square feet, shall be the basis upon which the utility and janitorial expenses are divided between the COUNTY and the STATE. Accordingly, the COUNTY'S proportional share of utility and janitorial expenses shall be thirty-two percent (32%) of the total expenses, and the STATE'S share shall be sixty-eight percent (68%). These percentage allocations represent the square feet for exclusive and common space occupied in the TOOEELE COURTS COMPLEX by the COUNTY and the STATE respectively.



### III INVOICING AND PAYMENT

Payments are to be made within thirty (30) days after a correct invoice is received. Payment shall not be deemed an acceptance of the Services and is without prejudice to any and all remedies outlined in this Agreement.

### IV INDEMNIFICATION

The parties to this Agreement are governmental entities under the “Utah Governmental Immunities Act”, Utah Code Annotated § 63-30-1, et seq. Pursuant to said Act, and as provided herein, nothing in this Contract shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by the Act. Nor shall this Contract be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Contract is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between these parties.

### V COMMUNICATION PROVISION

The COUNTY shall have access to the STATE’S communication network to facilitate communication between COUNTY, DFCM and the Third District Courts housed in the TOOOLE COURTS COMPLEX.

### VI EASEMENTS

The COUNTY agrees to permit the STATE and any authorized representative of the STATE to enter the COUNTY designated parts of the TOOOLE COURTS COMPLEX (as identified in Exhibit A) at any reasonable time or upon reasonable notice in emergencies for fire escape or maintenance purposes. In addition, each party agrees to allow parking in the public parking area of the other party. The non-public restricted parking shall be used for Judges and other restricted use purposes as mutually agreed upon the COUNTY and STATE representatives; such parking shall be divided according to the percentage of space in the TOOOLE COURTS COMPLEX occupied by the STATE and the COUNTY. COUNTY and STATE agree to execute recordable easements to accomplish these purposes.

### VII TERMS OF AGREEMENT AND AMENDMENTS THERETO

The term of this Agreement shall be for a period of five (5) years beginning December 1, 2021 through November 30, 2026.

Either party may suggest modifications or amendments to this Agreement. Both parties will negotiate in good faith to resolve any difference or concerns relative to the implementation of this Agreement.

Modifications or amendments will be submitted in writing as follows:

To the COUNTY:       Tooele County Manager  
47 South Main  
Tooele UT 84074  
Phone: (435) 843-3150

To the STATE:         Administrative Office of the Courts  
Attn: Facilities Management  
450 South State St.  
Salt Lake City, UT 84111  
(801) 578-3800, (801) 578-3968

#### VIII   DEFAULT

Any of the following events will constitute cause for either party to declare the other in default of this Agreement: (i) The party's non-performance of its requirements and obligations under this Agreement; or (ii) The party's material breach of any term or condition of this Agreement. Either party may issue a written notice of default providing a ten (10) day period in which the other will have an opportunity to cure. Time allowed for cure will not diminish or eliminate the defaulting party's liability for damages. If the default remains, after defaulting party has been provided the opportunity to cure, the other party may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Agreement; or (iii) demand a full refund of any payment that the non-defaulting party has made to the defaulting party under this Agreement for services that do not conform to this Agreement.

#### IX     TERMINATION

With Cause: Unless otherwise stated, this Agreement may be terminated with cause in advance of the specified expiration date by either party, upon written notice. The party in violation of the terms of this Agreement will be given ten (10) days after written notification to correct and cease the violations, after which this Agreement may be terminated immediately, and is subject to the default provisions in section VIII.

#### X     SEVERABILITY AND ENTIRE AGREEMENT

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provision or provisions shall remain valid and binding upon the parties. One or more waiver of any term, condition or other provision of the Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

This Agreement contains the entire Agreement between the parties, and not statement, promise or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered except in writing signed by both parties as specified under Section VI of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

TOOELE COUNTY

Jared Hamner  
County, Council Chair

STATE OF UTAH

\_\_\_\_\_  
Chris Talbot  
Director, Facilities Management

ATTEST

Tracy Shaw  
County Clerk

APPROVED

\_\_\_\_\_  
Keisa Williams  
AOC General Counsel

APPROVED

Colin Winchester  
Deputy Tooele County Attorney

APPROVED

\_\_\_\_\_  
DFCM

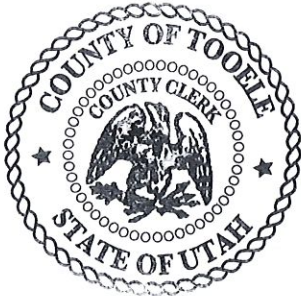


EXHIBIT A

Tooele Courts - Square Foot Allocation  
Prepared by MHTN Architects

	<input type="checkbox"/> STATE SPACE	<input type="checkbox"/> COUNTY SPACE
Level Basement	1,086 s.f.	----
Level One	12,156 s.f.	8,954 s.f.
Level Two	<u>15,401 s.f.</u>	<u>4,569 s.f.</u>
Total	28,643 s.f.	13,523 s.f.
Ratio s.f. County Space	<input type="checkbox"/>	13,523 s.f.
	= _____ =	_____ = 32%
to Gross Assignable	<input type="checkbox"/> + <input type="checkbox"/>	13,523 s.f. + 28,643 s.f.
Ratio s.f. State Space	<input type="checkbox"/>	28,643 s.f.
	= _____ =	_____ = 68%
to Gross Assignable	<input type="checkbox"/> + <input type="checkbox"/>	13,523 s.f. + 28,643 s.f.

**Common Area:** 57,608 s.f. - 13,523 s.f.  - 28,643 s.f.  = **15,442 s.f.**

**Space Allocation Gross Assignable + Common Area**

State = .68 x 15,442	= 10,501 s.f.	County = .32 x 15,442	= 4,941 s.f.
State Gross Assignable	= 28,643 s.f.	County Gross Assignable	= 13,523 s.f.
<b><u>Total s.f. to State</u></b>	= <b><u>39,144 s.f.</u></b>	<b><u>Total s.f. to County</u></b>	= <b><u>18,464 s.f.</u></b>

PAYMENT SCHEDULE					
Calendar Year:					
Beginning:	12/1/2021				
Ending:	11/30/2026				
Total O/M Cost	<b>County 32%</b>	<b>Discount</b>	<b>\$ Amount Due</b>	<b>Due Monthly</b>	
\$354,051.00	\$113,296.32	(\$10,000.00)	\$103,296.32	<b>\$8,608.03</b>	
	<b>State 68%</b>	<b>Absorb Discount</b>	<b>\$ Amount Due</b>		
	\$240,754.68	\$10,000.00	\$250,754.68		