



Michael C. O'Malley
CUYAHOGA COUNTY PROSECUTOR

April 20, 2026

Keith Faber, Auditor of State
Ohio Auditor of State
65 E State St.
Columbus, Ohio 43215

Dear Auditor of State Faber,

As the Prosecuting Attorney of Cuyahoga County, I write to you with concerns about the unlawful expenditure of public money. These concerns pertain to the application of Section 153.36 of the Ohio Revised Code ("R.C. 153.36") to the payment for acquisition of land and payments under two contracts for the design and construction of the Cuyahoga County Central Service Campus, which primarily consists of a county jail facility ("Project"). I am asking you to conduct a special audit and a review by your Public Integrity Unit, to address the concerns set forth in greater detail below.

Under the agreement dated July 6, 2021, attached as Exhibit A, Cuyahoga County ("County") retained Hellmuth, Obata & Kassabaum, P.C. ("HOK") to serve as the criteria architect for the Project "to design and construct a corrections facility on a new campus to replace the County's jail facilities currently located at the Cuyahoga County Justice Center Complex." Thereafter, Cuyahoga County acquired over 72 acres of land in Garfield Heights, Ohio for nearly \$39 million dollars paid from the "Justice Center Capital Projects Fund" in October 2023. Finally, Cuyahoga County entered into an agreement on April 23, 2024 with Gilbane Building Company ("Gilbane"), attached as Exhibit B, to serve as the design-builder for the Project.

Under its contract as the County's criteria architect, HOK performs the initial architectural and engineering services necessary to produce "GMP Drawings and Specifications." (See, attached hereto, Exhibit A at Article 3.8.) Gilbane then uses HOK's plans to obtain bids to determine the "Guaranteed Maximum Price" for constructing the Project. (See Exhibit B, attached hereto, at Article 4.8.) Establishing the Guaranteed Maximum Price will require Gilbane and the County to amend the design-build agreement. The Office of the Prosecuting Attorney anticipates that County Council will consider whether to amend the agreement with Gilbane to incorporate the Guaranteed Maximum Price at its meeting on April 28, 2026.

Even without incorporating the Guaranteed Maximum Price for the Project, the County's contract with Gilbane currently includes a provision for the contractor to commence "Early Release Work" for the "construction of specified portions of the Work prior to execution of the GMP amendment." (See, Exhibit B at Article 5.4.1.) The contract contained an initial allowance of \$30 million for the County to pay Gilbane for such Early Release Work, and Cuyahoga County Council recently approved an amended to increase the Early Release Work's budget to \$55 million. Project proponents have described the Early Release Work in a January 13, 2026 presentation to County Council as consisting of "demolition earth work and grading", and explained that Early Release Work serves, in part, to "maintain schedule" for the Project. Accordingly, the Early Release Work consists of critical path construction activities to make the public improvement Project.

I recently learned that the County has authorized Gilbane to commence site improvements for the Project as part of the Early Release Work. During a visit to the 72-acres on April 16, 2026, I personally witnessed excavators, front-end loaders and other heavy constructing equipment actively performing site work for the Project. Thus, the Project has commenced whether through the acquisition of land, the retention of the criteria architect or design-builder, or through the actual public improvements actively taking place on site.

The County authorized this Project activity to commence without obtaining the approvals required under R.C. 153.36. Under the law, a county jail project with an estimated total cost greater than seventy-five thousand dollars "shall not commence" unless approved by a majority of the "clerk of the court of common pleas, the sheriff, and probate judge, and one person to be appointed by the judge of the court of common pleas."

The County Executive and Council are aware of the mandates under R.C. 153.36.

The County official's knowledge of the law evidenced as early as October 31, 2024 when the then-Administrative and Presiding Judge of the Court of Common Pleas and the senior Probate Judge (among other stakeholders), put the Cuyahoga County Executive on notice (attached as Exhibit C). In their letter, those judges identified in R.C. 153.36 expressed their concerns that "planning for the Jail and the Justice Center have moved forward in a manner which is less than transparent" and that the proposed Jail gives rise to questions about "the structure of the facility." The judges demanded that, "All decision-making related to the Jail and Justice Center must be made in an environment that is respectful to all branches of government." The judges concluded that, "We ask that you convene a meeting with the Steering Committee in order to satisfy the requirements of the Revised Code[.]"

The Cuyahoga County Executive and then-President of County Council jointly responded to the judges' concerns through the letter dated November 15, 2024 (attached as Exhibit D), "calling for the creation of the committee . . . under R.C. 153.36. This section provides for the approval at the appropriate time of plans for the building of the courthouse or jail[.]"

After learning that public improvement work for the Project had commenced onsite, I sent a letter on March 26, 2026 to the County Executive and Council demanding that no public funds are paid for the Project without the approvals required under R.C. 153.36 (attached as Exhibit E). The Project proponents have failed to heed my demand based on my personal observations that the construction work is proceeding unabated as recently as April 16, 2026.

To date, Cuyahoga County has not obtained the necessary approvals of the plans for the jail. Yet, construction of the Project's public improvements has commenced at least in the form of Early Release Work. This Early Release Work is the culmination of the acquisition of the site and the services performed under the criteria architect and design build contracts for the Project. Thus, I write to you seeking a special audit and a review by your Public Integrity Unit to address my concerns over whether payment for the acquisition of the site, for services under the criteria architect and design build agreements, and for the Early Release Work has occurred in contravention to Ohio law given the lack of compliance with R.C. 153.36.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Kelly", with a stylized flourish at the end.

Cuyahoga County Prosecutor

Enclosures