

Denver Auditor's Office

*Denver Auditor
Timothy M. O'Brien, CPA*



ORDINANCE REQUEST

WELLINGTON E. WEBB
MUNICIPAL OFFICE BUILDING

AGENDA

- Denver law requirements and existing problems
- Audit Services issues and existing tools
- Wage enforcement issues and existing tools
- Why subpoena power solution is correct
- How subpoena works and records timeline



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Denver law requires

- Auditor's Office to conduct financial and performance audits.
- Use Generally Accepted Government Auditing Standards.
- Enforcement of wage ordinances.



The problems:

- Independent agencies rejecting access to records needed for audits - as set out in Charter.
- Noncompliance with records requests during wage investigations and failure of existing tools to guarantee production of records.





The lack of a sufficient mechanism to obtain records causes

- Delays in audits.
- Increases in costs.
- Prevents Auditor's Office from completing its statutorily required duties.





ISSUE 1:
Audit Delays

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Audits **DELAYED OR IMPAIRED** by issues related to records requests:

DELAYED

- **Denver Zoo** – resisted access to records
- **Denver County Courts** – mistakenly thought they weren't part of City and County of Denver

IMPAIRED

- **DEN/Westin (Marriott)** – information was never provided
- **Denver Art Museum** – information was never provided, access to database was restricted

Delays caused by inaccessible records are enormously costly to the city.

- One day of lost time for a small audit team of four auditors costs taxpayers approximately \$2,388.
- One week of lost work costs the city approximately \$9,553.
- We believe delays at the Denver Art Museum slowed the audit by 4-6 weeks.





Other examples of Audits **DELAYED OR IMPAIRED** by issues related to records:

- Botanic Gardens
- Rocky Mountain Human Services
- Clerk & Recorder's Office
- Denver Preschool Program
- Botanic Gardens
- Airport Security



The Auditor's Office already provides notice of right to records at the start of every audit.

- Offer opportunity for objection and resolution.
- Parties still refuse access late in the audit process.
- Audit clause in every contract.



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EXISTING TOOLS

Audit Services tools:

- No explicit recourse in Denver law
- No opportunity for sanctions
- Could take breach of contract to court, which could last years
- Public opinion

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ISSUE 2:
**Wage Enforcement
Delays**

- In 2020, the Auditor's Office held the payment of 404 invoices totaling \$31,312,189 when contractors failed to furnish necessary records for a significant period of time.
- No fines have been recovered.
- Some held invoices for years.
- Contractor cost-benefit analysis.



EXISTING TOOLS

Work	Tools
Audit Services	No statutory tool exists to require compliance.
	We have not sued an auditee for breach of contract because sufficient audit clauses have not been in place, and the extreme delays and costs are not practical for an audit.
Prevailing Wage	Hold Invoices - In 2020, the Auditor's Office held payment on 404 invoices totaling \$31,312,198. Holding payment resolved the issued on 370 invoices. On 29 invoices, the contractor has failed to provide requested documentation requested. On 5 invoices, the contractor has provided no documentation.
	Fines - Fines have been asserted once as part of litigation but were not recovered. The disputes and collections process associated with fines is lengthy and costly.
Minimum Wage	Fines - In the first year of the ordinance, there has not been cause to fine an employer.





Existing mechanisms to obtain wage enforcement information are insufficient.



5 wage ordinances provide access to employer payroll records



2 wage ordinances permit withholding payment

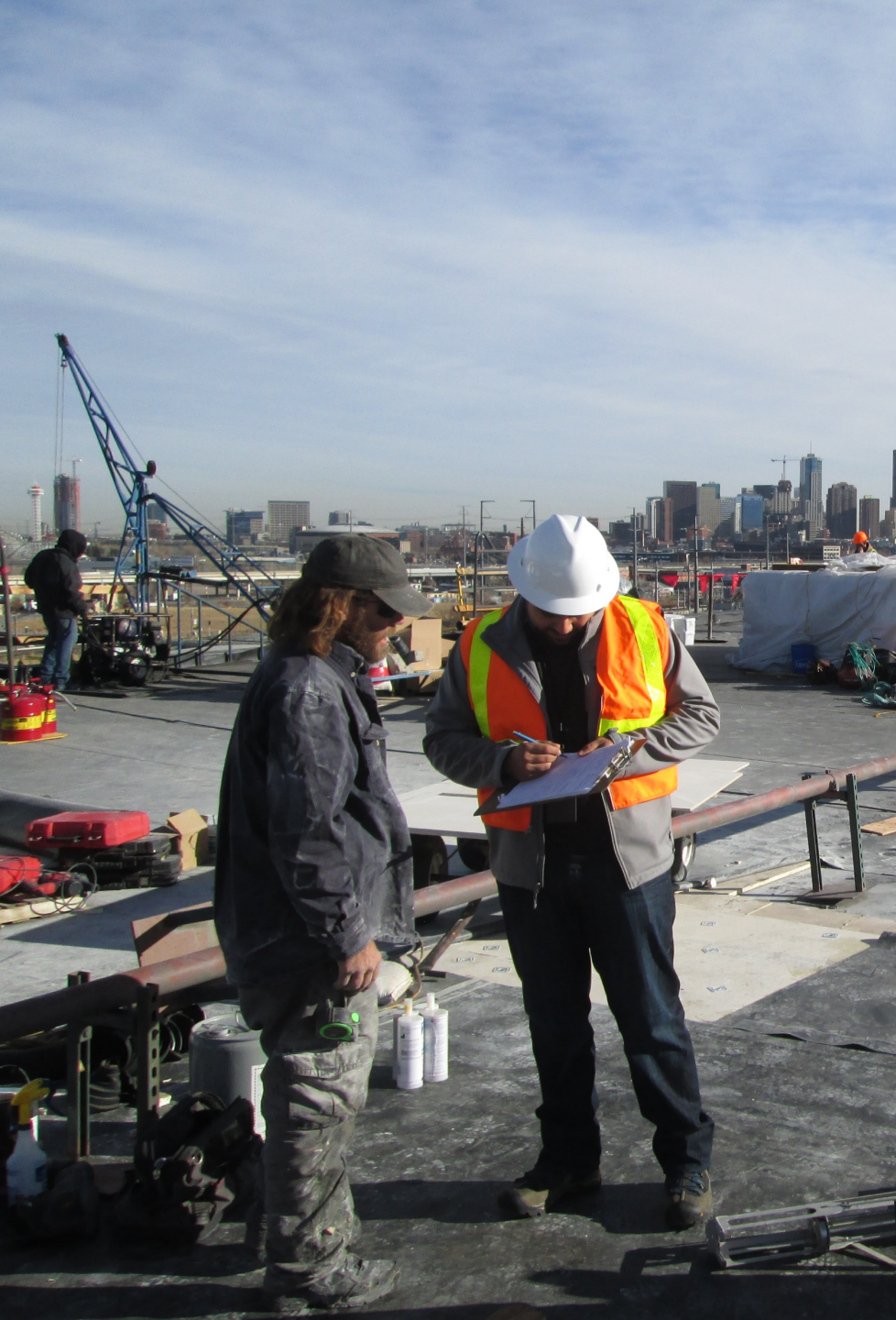


3 wage ordinances permit fines



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Withholding payment and fines are blunt and cumbersome tools.

Holding payments could:

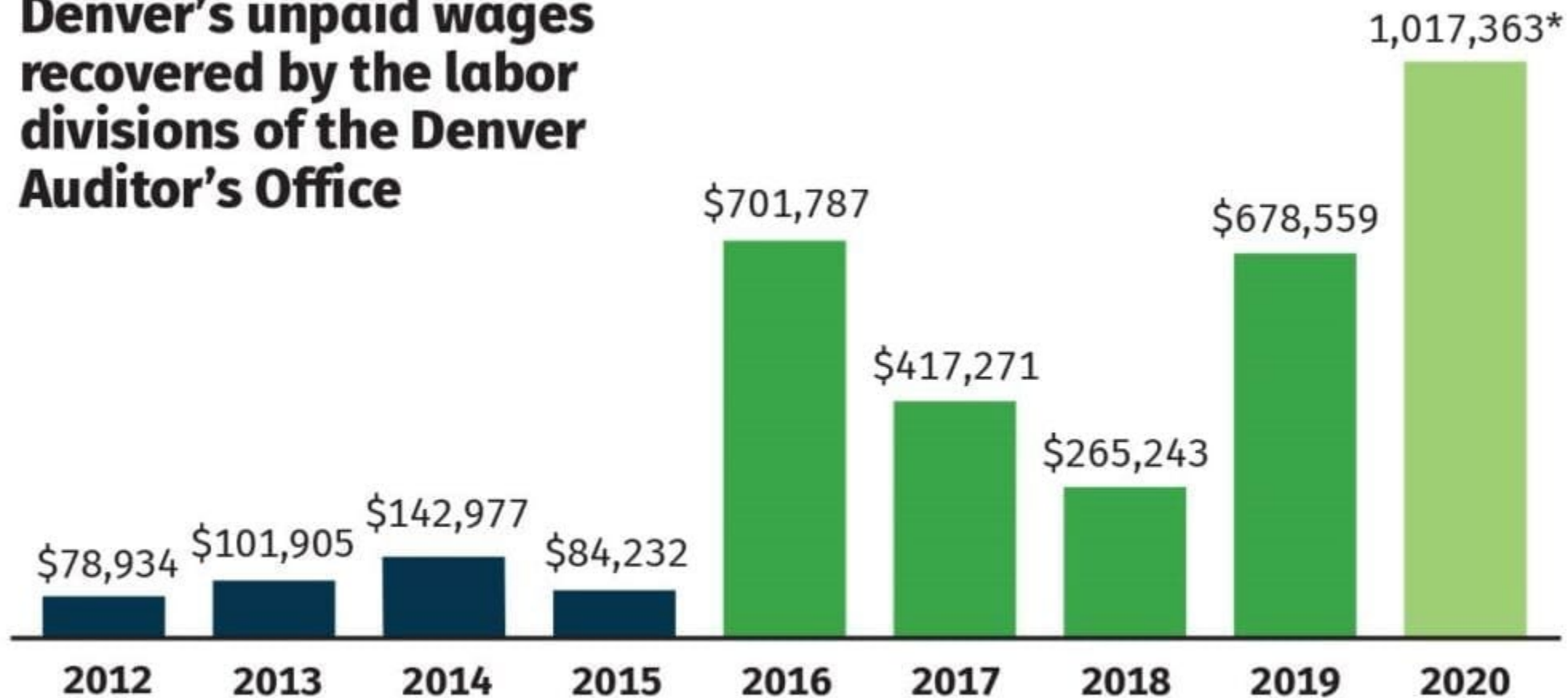
- Harm other compliant contractors on the same invoice.
- Keep workers from getting paid right away.
- Still not result in production of records.



- The Auditor's Office regularly discusses fines with contractors.
- Fines have never been awarded in court.
- Appeals can be lengthy and still don't get workers paid.



Denver's unpaid wages recovered by the labor divisions of the Denver Auditor's Office



*As of October 30





Subpoena Power Solution

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The proposal will grant the Auditor the authority to subpoena information with three limitations:

- Limited to performance of one of the Auditor's statutory duties.
- Subpoenas not served or enforced against a city officer or employee.
- Strongest due process protection against unreasonable requests.



Audit Subpoena Timeline

1

Audit
Plan
published

2

Notice
of Audit
– Letter

3

Entrance
Conference

4

Written
request for
records

5

Employer
fails to
produce
required
payroll
records

6

7-days
after
written
request
pass,
subpoena
can be
issued

7

14-days
after
subpoena
issued to
respond
or object



Wage Enforcement Subpoena Timelines

Minimum Wage



Prevailing Wage



Subpoena Power Advantages

- Changes the conversation
- Allows more tools in toolbox
- No-cost, more incremental solution for audit delays
- Will guarantee production of records, not just fines for wage enforcement



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Denver's Auditor is the only elected city official without subpoena authority.

- Mayor and Cabinet (Charter 2.2.11)
- City Council (DMRC 13-31)
- Clerk and Recorder (Charter 8.2.26)

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Other city agencies also have subpoena authority to complete their duties:

- Career Service Board
(Charter 9.1.1)
- Board of Ethics
(DMRC 2-58)
- Excise and Licenses
(DMRC 32-26)



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City or County Audit Functions with Subpoena Power

- **City of Albuquerque, NM**
- **City of Atlanta, GA**
- **Broward County, FL**
- **City of Chicago, IL**
- **District of Columbia**
- **City of Detroit, MI**
- **City and County of Honolulu, HI**
- **City of Kansas City, MO**
- **Montgomery County, MD**
- **Palm Beach County, FL**
- **City of Portland, OR**
- **City of San Diego, CA**
- **City of Santa Fe, NM**
- **Municipality of Monroeville, PA (Allegheny County)**
- **Miami-Dade County, FL**

**Although we could not survey the functions of every city and county in the country, we found many municipalities have similar subpoena authority. This is a list of some comparable cities and counties, as well as cities and counties of different sizes to show the range of applicability.*

Audit agencies that have the authority to issue subpoenas

- Department of Examiners of Public Accounts, Alabama
- Division of Legislative Audit, Alaska
- Division of Legislative Audit, Arkansas
- Office of State Auditor, California
- Office of the State Auditor, Colorado
- Office of the Auditor of Accounts, Delaware
- Department of Audits and Accounts, Georgia
- Office of the Public Auditor, Guam
- Office of the Auditor, Hawaii
- Office of the Auditor General, Illinois
- State Board of Accounts, Indiana
- Office of the Auditor of State, Iowa
- Office of the Auditor of Public Accounts, Kentucky
- Legislative Auditor, Louisiana
- Office of the State Auditor, Maine
- Office of Legislative Audits, Maryland
- Office of the Auditor General, Michigan
- Office of the Legislative Auditor, Minnesota
- Office of the State Auditor, Minnesota
- Office of the State Auditor, Mississippi
- Office of the State Auditor, Missouri
- Office of the Auditor of Public Accounts, Nebraska
- Office of the State Auditor, New Mexico
- Office of the State Comptroller, New York
- Office of the State Auditor, North Carolina
- Office of the Auditor of State, Ohio
- Office of the State Auditor and Inspector, Oklahoma
- Division of Audits, Oregon
- Office of the Comptroller, Puerto Rico
- Department of Legislative Audit, South Dakota
- Office of the Comptroller of the Treasury, Tennessee
- Office of the State Auditor, Utah
- Office of the State Auditor, Vermont
- Office of the Auditor of Public Accounts, Virginia
- Office of the State Auditor, Washington
- Legislative Audit Bureau, Wisconsin
- Department of Audit, Wyoming



Express purpose of subpoena is to obtain documents and information, unlike litigation.

	Subpoena	Litigation
Burden	Takes 2 hours or less and is less burdensome for both the city and the community members involved	Could take as long as a year
Cost	Relatively inexpensive	Could incur significant costs for the city and community



Ordinance would encourage cooperation and permit the Auditor and subpoenaed party to mutually agree to a time and scope for production.

Subpoenaed party has the right to object to production of records.



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Checks on the Subpoena Power:

- Review of Courts
- Auditor answers to the People of Denver
- Strict government auditing standards require adherence to all applicable confidentiality laws.

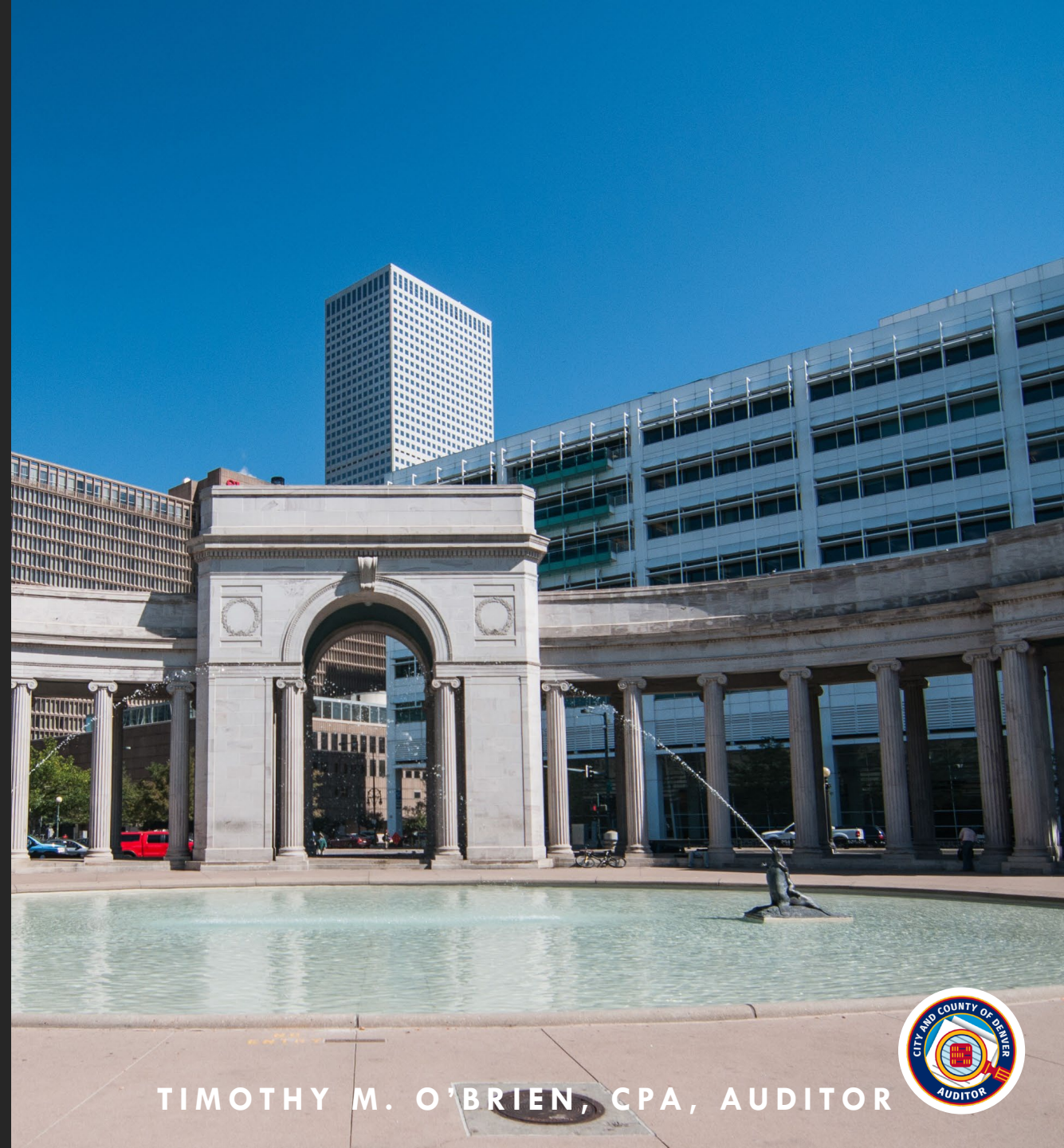


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We hope to never need this tool, however the goal is to:

- Permit the Auditor's Office to perform its duties.
- Perform work within a reasonable period of time.
- Complete work at a lower cost to taxpayers.



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THANK YOU! QUESTIONS?

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