



Request for Proposals

For

Babcock Theater Marquee Rehabilitation

210 North 27th Street P.O. Box 1178, Billings, MT 59101



**Request For Proposals
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Section 1: General Information

Request For Proposals (RFP) – Babcock Theater Marquee Rehabilitation

THE ABOVE DESCRIPTION MUST APPEAR ON ALL PROPOSALS AND RELATED CORRESPONDENCE. **THIS IS NOT AN ORDER.**

PROPOSALS MUST BE <u>RECEIVED</u> NO LATER THAN: Friday, May 3, 2024, at 5:00 pm (MDT)	RFP INITIATIVE: Babcock Theater Marquee Rehabilitation
<ul style="list-style-type: none">All suppliers must respond in detail to each element of this RFP in order to be considered for contract award.All proposals must be emailed to contact person at the address below.Pricing must be emailed under separate cover with “Babcock Theater Marquee Rehabilitation RFP Confidential Pricing” as the subject line.	
SEND ALL CORRESPONDENCE TO THE CONTACT BELOW:	
<p>JOHN CATERINO, FACILITIES MANAGER Email: CATERINOJ@billingsmt.gov PHONE: (406) 855-8454</p>	



Section 2: Objectives

Introduction and Objectives

This RFP is issued by City of Billings (City) for the purpose of obtaining information and pricing regarding rehabilitation of exterior marquee. It is the intent of the City to review and assess the RFP responses to determine which proposal best meets the needs of the City.

Suppliers are expected to provide their best and most competitive proposal.

Attachment E, the Intent to Respond form, must be completed and emailed at least five (5) days prior to the advertised RFP due date.

Section 3: Information for Suppliers

Disclaimer

This RFP does not form or constitute a contractual document. The City shall not be liable for any loss, expense, damage or claim arising out of the advice given or not given or statements made or omitted to be made in connection with this RFP. The City also will not be responsible for any expenses which may be incurred in the preparation of this RFP. This RFP is not to be construed as a contract or commitment of any kind.

Instructions to Proposers

EXAMINATION OF DOCUMENTS

Before submitting the proposals, the proposer shall:

- (a) Carefully examine the Standards and Specifications as well as all other attached documents;
- (b) Fully inform yourself of the existing conditions and limitations;
- (c) Include with the proposal sufficient information to cover all items required in the specifications.

PROPOSAL MODIFICATIONS

In addition to any other information and documentation requested in this RFP, any forms provided herein shall be included in the submitted proposal. Modifications, additions or changes to the terms and conditions of this request for proposals may be cause for rejection of the proposal. Proposals submitted without required forms may be rejected.



WITHDRAWAL OF PROPOSALS

Proposers may withdraw their proposal by written request at any time prior to the due date set for receiving proposals.

PRICES HONORED

By responding to this RFP, Proposer acknowledges that no contractual relationship with the Proposer exists until execution of the resulting contract following City Administration or City Council approval. Because contract approval can be delayed due to scheduling or unforeseen circumstances, the Proposer must honor their pricing and any other terms set forth in the proposal for at least ninety (90) days after the RFP due date.

The prices established from this RFP may be extended to other political subdivisions within the State of Montana solely at the vendor's discretion.

CERTIFICATION

The proposer certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition. The proposer further certifies that the materials, products, services and/or goods offered herein meet all requirements of the stated specifications and are equal in quality, value and performance with highest quality, nationally advertised brand and/or trade names.

Any manufacturer's trade names, if used in specifications, are for the express purpose of establishing a standard of quality and coordination of design, not for the purpose of limiting competition.

INSURANCE REQUIREMENTS

The proposer certifies that it/they can comply with the City insurance requirements of:

- 1. Workers' compensation and employer's liability coverage as required by Montana law.**
- 2. Commercial general liability, including contractual and personal injury coverages - \$750,000 per claim and \$1,500,000 per occurrence.**
- 3. Automobile liability - \$1,500,000 per accident.**
- 4. Professional liability in the amount of \$1,500,000 per claim.**

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the City prior to cancellation.

The City shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against the City.

Proposer shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Proposer shall maintain workers' compensation insurance coverage for all members and



employees of Proposer's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

(please note – proof of insurance is not required to be submitted with proposal, but must be provided prior to contract execution)

The successful proposer will be required to purchase a City business license and complete the new vendor forms in order to be eligible for payment.

DISPOSITION OF PROPOSALS

All materials submitted in response to this RFP become public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

Information provided in response to this RFP will be held in confidence and will not be revealed or discussed with competitors prior to award of Contract by Council. However, one copy of each proposal submitted shall be retained for the official files of the Department and will become public record after award of the Contract. Fee or Price schedules submitted, but not reviewed by the City, do not become a public record and shall only be retained for official files.

Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section.

QUESTIONS

Questions regarding the Request for Proposals contents must be sent to the contact person listed in Section 1 no later than 5 business days prior to due date for proposals. The City will make every effort to provide a written response within 2 business days. Whenever responses to inquiries would constitute a modification or addition to the original RFP, the reply will be made in the form of an addendum to the Request for Proposals, a copy of which will be posted on the City's website and forwarded to all Suppliers who have submitted an "Intent to Respond" form (Attachment E).

Supplier must submit their questions via email using the "Master Q & A" form found in **Attachment D**, and provide, at a minimum, the following:

- Supplier's name, requester, and appropriate contact information.
- The question, clearly stated.
- Specific reference to the applicable Request for Proposals section(s).

RFP Response Submission

Upon the submission of the RFP response, the supplier acknowledges that all information is accurate and complete.

All proposals must be emailed to the contact person listed in Section 1.

Pricing must be emailed under separate cover with "Babcock Theater Marquee Rehabilitation RFP Confidential Pricing" as the subject line.



Section 4: RFP Evaluation and Selection Processes

Initial Evaluation

Proposals received will undergo an initial review to determine:

- Compliance with instructions stated in the RFP
- Compliance with proposal submittal date

Phase II Evaluation

The evaluation of supplier's proposals must include responses and all costs associated with the following criteria:

1. Cover Letter
2. Relevant Experience
3. Proposed Staff
4. Project Methodology and Approach
5. Sample Log
6. References
7. Acknowledgement
8. File Size

1. Cover letter / Statement of interest addressed to John Caterino – Facilities Manager.
2. Description of firm's technical, functional, and relevant experience with projects of similar size and scope. As the marquee is a historic element, supplier shall list examples of specific historic renovation or rehabilitation experience completing projects of similar size and scope and provide dates for when projects were completed.
3. Proposed staff and their relevant experience. A list of all personnel for this project, including resumes, shall be included with details on the overall project lead and any/all technicians that will be performing investigations, inspections, repairs, and reporting. Include certifications held by all proposed staff and any all-relevant project experience for the team.
4. Suppliers shall provide a narrative of the proposed approach and project methodology. It shall detail specifics on recommended and proposed steps, actions, sequence of operations, rehabilitation means and methods, restoration techniques, and path to ensure all items in Section 5 Scope of Work are completed. Additionally, the proposal shall include a schedule and milestone deliverability graph, timeframe for how long the marquee will be non-operational, the extent by which the marquee in part or full will need to be removed from the exterior building façade, and all resources that are expected from the Owner. The attached condition audit report is for reference and supplier should be detailed with identification of all repair work and provide specifics on required rehabilitation efforts.
5. Provide a sample/visual of previous work completed of similar size and scope. This can include photos and a detailed list of completed scope of work.
6. References and contact numbers (3 minimum) from previous representatives of projects completed of similar size and scope.



7. Provide written acknowledgement that Supplier has reviewed the contract draft information and would execute this agreement with no changes. If Supplier has any changes/modifications, include them in this section for consideration by the Owner.
8. PDF response shall not exceed 30 pages and info should be clearly formatted per the criteria as described herein. PDF file should be 18mb file size or less. PDFs can be locked but need to be readable and printable without a password. Late Submissions will not be accepted.

A committee of individuals representing the City of Billings and Babcock Improvements Committee will evaluate the proposals. The committee will rank the proposals as submitted based upon adherence to and responses to the above

The City reserves the right to conduct interviews with all or some of the Proposers at any point during the evaluation process. However, the city may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating firms using the above-stated criteria.

The City also reserves the right to make such additional investigation as it deems necessary to establish the competence and financial stability of any firm submitting a proposal.

Section 5: Scope of Work

Below is a general outline of the anticipated scope of work. However, the final scope of work will be negotiated with the successful proposer.

Project Scope

The City of Billings Facilities Division (Owner) requests proposals for a qualified firm to provide rehabilitation services necessary to complete a full repair of the exterior marquee of Babcock Theater located at 2810 ½ 2nd Ave N.

In December 2023 the Owner commissioned an engineering firm to conduct a visual inspection of the marquee. The condition report is included in this RFP as Attachment F. The marquee is in poor to fair condition and needs complete rehabilitation of all items included in Attachment F which includes structural, roof, paneling, electrical, and paint. That document should be used as the baseline template to help guide Suppliers repair methodology. Engineers cost estimates have been redacted.

All materials used for rehabilitation shall be new, of good quality. All removed materials are to be disposed of by Supplier in accordance with regulatory compliance.

The goals of this project are to rehabilitate the marquee by bringing the quality to modern operation and ensure historical accuracy of original design intent with as little modification as possible.

Specifics include:

- Structure
 - o Improvement of structural integrity of framing and mounting for specific components such as cabinet, support wires, and structure
- Envelope
 - o Construct a watertight assembly that ensures proper weeping and drainage
 - o Repair or replace all areas of exterior paneling that are oxidized
 - o Repaint metal skin with matching like colors
- Display

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- Replace rail sign board with a digital LED display area panel that is controlled via software
- Provide all necessary hardware to interface and integrate with display software
- LED display to fit in existing opening
- Lighting
 - Replace neon tubes with matching like color LED tubes
 - Replace soffit can and chasing lights with matching like color LED lamps
- Venting
 - Proper venting of interstitial space



ATTACHMENT A

VALIDATION QUESTIONS FOR SUPPLIER

GENERAL INFORMATION

- 1) Company Name
Address:
Contact Name:
Contact Phone:
Contact Email:
Website/URL:
- 2) How many facilities/locations do you have in the U.S? Please list.
- 3) How many years has your company been doing business under this name?
- 4) Total Full-Time Employees.
- 5) Do you have Small Business Administration Status? If yes, can you provide documentation?
- 6) What are your standard payment terms?
- 7) References - Please include a page with all contact information for at least the following three references:
 - a) New Company (started doing business with them in the past 12 months)
 - b) Retained Company (have been doing business with them for 3 + years)
 - c) Former Company (contract terminated in the past 2 years)
- 8) Can you provide a statement and meet the City minimum insurance requirements of \$750,000 per claim and \$1,500,000 per occurrence, and the City being named as an additional insured? (please note – proof of insurance is not required to be submitted with proposal, but must be provided prior to contract execution)

FUNCTIONALITY

- 1) A certificate of insurance must be provided prior to signing the contract, commencing on the day contract begins. Are you willing to comply with these requirements?
- 2) You must instruct your insurance broker/carrier to notify the City should your coverage change. Are you willing to do this?
- 3) The successful proposer will be required to purchase a City business license and complete the new vendor forms in order to be eligible for payment. Are you willing to do this?

QUALITY AND SERVICE

- 1) Do you have a quality assurance program? If yes, please attach a copy.
- 2) Are your employees required to take a mandatory drug test?

LEGAL ISSUES

- 1) Are there any pending lawsuits against your company? If yes, please explain.



ATTACHMENT B

PRICE MATRIX

(To be sent separately pursuant to instructions in Section 1)

<u>Item</u>	<u>Price</u>
Base Bid: Lump sum for services outlined in Section 5 for Scope of work: structure, envelope, display, lighting, venting *	\$
Add Alternate – Replace sign rail board with like sign rail board	\$
Add Alternate – Replace neon tubing with like neon tubing	\$

* Lump Sum shall include all costs for labor, materials, shop drawings, and renderings to rehabilitate marquee. Hourly rate and travel cost schedules are requested in the event of additional scope.

I/We acknowledge _____ addendum.

#

Company Name

Date

Contact Name (please print)

Title

Signature of Contact Position

By signing the above, I certify that I am authorized by the Company named above to respond to this request.



ATTACHMENT C

CONDITIONS AND NON-COLLUSION FORM

To receive consideration, this form must be signed in full by a responsible, authorized agent, officer, employee or representative of your firm.

CONDITIONS AND NON-COLLUSION AGREEMENT

We have read and agree to the conditions and stipulations contained herein and to the Standard Terms and Conditions contained on the attached.

We further agree to furnish the services specified at the prices stated herein, to be delivered to the location and on that date set forth herein.

In signing this proposal, you also certify that you have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a proposal; that this proposal has been independently arrived at without collusion with any other proposer, competitor or potential competitor; that this proposal has not been knowingly disclosed prior to the due date and time to any other proposer or competitor; that the above statement is accurate under penalty of perjury.

Legal Name of Firm/Corporation

Authorized Signature

Address

Printed Name

City/State/Zip

Title

Date

Telephone Number



ATTACHMENT D

MASTER Q & A FORM

PROJECT: Babcock Theater Marquee Rehabilitation

Master Q&A	Any questions regarding this Request for Proposals should be submitted according to the process outlined below. The City will make every effort to answer within five (5) days of receiving the questions.
Q&A Process	<ol style="list-style-type: none">1. Prepare questions or concerns on the template provided.2. Complete the table in full, providing a date for each question and a section of the RFP to reference (if applicable).3. Submit the completed form via email to caterinoj@billingsmt.gov. Attach associated documents as necessary. <p>Please contact John Caterino with any questions regarding this process.</p>

Questions from: _____ **Company:** _____

Email Address: _____

#	Date	Reference Section	Question or Comment	City Response
1				
2				
3				
4				



ATTACHMENT E

INTENT TO RESPOND FORM

RFP: Babcock Theater Marquee Rehabilitation

Dated _____

Email the following Intent to Respond form within four (4) days of the RFP due date even if your company chooses NOT to participate in the RFP.

To: **City of Billings**
Attn: John Caterino
Email: caterinoj@billingsmt.gov

From: _____

Contact Name
Company Name
Company Address

Phone Number
Fax Number
Email Address

We intend to respond to this RFP by the specified due date:

Yes _____ No _____

Company Name _____ Date _____

Contact Name (please print) _____ Title _____

Signature of Contact Person

By signing the above, I certify that I am authorized by the Company named above to respond to this request.

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ATTACHMENT F

PROPOSER CONTACT INFORMATION

A. Company Contacts

Primary Contact Person (Name):	
Title/Function:	
Address	
Business Hours Phone:	
Fax:	
Internet E-mail Address:	
Name of Person Responding to Request:	
Title/Function:	
Address:	
Phone:	
Fax:	
Internet E-mail Address:	

B. General Company and Financial Information

Company Name:	
Headquarters Address:	
City, State, ZIP	
Headquarters Phone:	
Headquarters Fax:	
Company Owned By:	
Percent % Ownership:	
Years In Business	
Name of CIO	
Name of CEO/President:	



ATTACHMENT G

SAMPLE CONTRACT

THIS AGREEMENT is made and entered into _____, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and _____, of _____, hereinafter referred to as "**CONTRACTOR**."

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:** **CITY** agrees to hire **CONTRACTOR** as an independent contractor to perform the services of _____ described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.
2. **EFFECTIVE DATE:** This **AGREEMENT** is effective upon the date of its execution and will terminate on _____, 20_____. The parties may extend this **AGREEMENT**, by mutual concurrence, for _____, in writing prior to its termination.
3. **SCOPE OF WORK:** The **CONTRACTOR** shall perform the services outlined in Exhibit "A". In performing these services, the **CONTRACTOR** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.
4. **INCORPORATION BY REFERENCE:** All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.
5. **PAYMENT:** **CITY** agrees to pay **CONTRACTOR** _____ (\$_____) for the work described in the Scope of Work in Exhibit "A". Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the **CITY** to **CONTRACTOR** and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

Except as otherwise specified herein, the **CONTRACTOR** shall invoice the **CITY** monthly (or on such other basis as the Parties may mutually determine) for all services rendered pursuant to this **AGREEMENT**. Such invoices shall specify the services provided to the **CITY** during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.



Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONTRACTOR** for said invoice within thirty (30) days after receipt.

If partial payment is requested by **CONTRACTOR**, it shall be made upon invoice and said estimate being proportioned to the work completed by the **CONTRACTOR**. **CITY** shall deduct five percent (5%) from each pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final invoice by the **CITY**, and determination has been made by the **CITY** that the scope of work has been satisfactorily completed.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **CONTRACTOR'S** discretion.

6. **LIQUIDATED DAMAGES:** If **CONTRACTOR** does not complete the work by the designated contract date(s), liquidated damages will be assessed in the form of a daily charge for each day, except Saturdays, Sundays, and legal holidays which exceed the contract date.

The daily charge(s) are stipulated to be reasonable quantifications of the damages incurred by the **CITY**:

- Liquidated damages for failure to complete project: \$150.00 per day.
- The charge(s) will be deducted from money due the **CONTRACTOR**.

7. **INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONTRACTOR** is an independent contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **CONTRACTOR** is not subject to the terms and provisions of the **CITY's** personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **CONTRACTOR** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONTRACTOR** and any third parties.

8. **INDEMNITY:**

The **CONTRACTOR** SHALL:

- A. Indemnify, defend, and save **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of **CONTRACTOR** or its agents or employees.
- B. Not indemnify, defend, save, and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or



negligent acts, error or omission solely of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.

C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CITY** and the **CONTRACTOR**, the **CONTRACTOR** shall indemnify, defend, save, and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the **CONTRACTOR'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONTRACTOR'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

D. Indemnify, defend and save **CONTRACTOR**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of **CITY** or its agents or employees.

E. Not indemnify, defend, save and hold the **CONTRACTOR** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the **CONTRACTOR** occurring during the course of or as a result of the performance of the **AGREEMENT**.

F. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CONTRACTOR** and the **CITY**, the **CITY** shall indemnify, defend, save, and hold the **CONTRACTOR** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

9. **INSURANCE:** The **CONTRACTOR** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONTRACTOR** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONTRACTOR** shall provide the following insurance:

- 1) Workers' compensation and employer's liability coverage as required by Montana law.
- 2) Commercial general liability, including contractual and personal injury coverage's -- \$750,000 per claim and \$1,500,000 per occurrence.
- 3) Automobile liability -- \$1,500,000 per accident.

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Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.

The **CITY** shall be listed as an additional insured on all policies except Worker's Compensation Policies.

CONTRACTOR shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA.

CONTRACTOR shall maintain workers' compensation insurance coverage for all members and employees of **CONTRACTOR's** business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

CONTRACTOR shall furnish **CITY** with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

CONTRACTOR shall furnish an approved Performance Bond and a Labor and Materials Payment Bond, each in the amount of one hundred percent (100%) of the contract amount.

10. PERMITTING AND INSPECTIONS:

- A. **CONTRACTOR** to obtain all required permits before beginning construction. Cost of permits shall be billed to the **CITY** as a reimbursable expense with no mark-up.
- B. **CONTRACTOR** to obtain all required inspections during construction and at final completion.

11. EQUIPMENT AND MATERIALS CUSTODY:

- A. **CITY** shall not be responsible for any equipment or materials until it is installed and commissioned.
- B. If materials or equipment go missing for any reason before they are installed and commissioned, they shall be replaced at no cost to **CITY**.
- C. All equipment and materials shall be secured and stored by **CONTRACTOR** in a location approved by the **CITY** or offsite.
- D. If arrangements are made to store onsite **CITY** shall not be responsible for any missing items.
- E. **CITY** will not take delivery of any equipment or materials.
- F. All equipment and materials must be brought onsite by **CONTRACTOR**.

12. EQUIPMENT AND MATERIALS INVENTORY:

- A. A detailed inventory list shall be provided by **CONTRACTOR** to **CITY** upon **CONTRACTOR** mobilization or project commencement.

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- B. Inventory list to include material information (make, model, etc.), and quantity.
- C. When an item is installed and commissioned it shall be deducted from the inventory list.

13. **WARRANTY:** **CONTRACTOR** warrants that all services and work will be performed in a good workman-like manner. **CONTRACTOR** acknowledges that it will be liable for any breach of this warranty for the lesser period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

14. **COMPLIANCE WITH LAWS:** **CONTRACTOR** agrees to comply with all federal, state, and local laws, ordinances, rules, and regulations. **CONTRACTOR** agrees to purchase a **CITY** business license.

15. **PREVAILING WAGE RATES:** Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Furthermore, Section 18-2-417, requires allowance for a 3% annual increase in wages for a multiyear contract. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract. (2) The standard prevailing rate of wages paid to workers under a contract subject to this section



must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. (3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, The booklet is attached and may also be found at <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>.

16. CONTRACTORS' GROSS RECEIPTS TAX: CONTRACTOR understands that all contractors or subcontractors working on a publicly funded construction project, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Eighty Thousand Dollars (\$80,000) or more.

17. NONDISCRIMINATION:

- A. **CONTRACTOR** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **CONTRACTOR** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONTRACTOR** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONTRACTOR** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**.
- B. The **CONTRACTOR** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion,



national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

The **CONTRACTOR** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

The **CONTRACTOR** and any subcontractor shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **CONTRACTOR'S** legal duty to furnish information.

- C. The **CONTRACTOR** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
- D. The **CONTRACTOR** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- E. The **CONTRACTOR** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of the **CONTRACTOR** under this **AGREEMENT**.
- F. The **CONTRACTOR** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

18. **CONTRACTOR PERSONNEL:** A list of personnel who will be onsite for project shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution, including:

- A. First and last name;
- B. Duration onsite; and,
- C. Personnel responsibilities.

19. **SAFETY PROGRAM:** **CONTRACTOR** to provide **CITY** with safety program within 10 business days of contract execution.

20. **MEETINGS:** **CONTRACTOR** shall attend a pre-construction meeting with **CITY** representatives, as well as progress meetings as requested by the **CITY**.



21. PROJECT SCHEDULE TIMELINE: A project schedule timeline shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution. Accepted schedule formats are Gantt chart, network diagram, critical path diagram, or sequential flow chart. A Phase-Based Work-Breakdown Structure (WBS) by resource shall be provided by **CONTRACTOR** to **CITY** within 10 business days of contract execution and shall include a decomposed project scope consisting of phases and deliverables, tasks, and component deadlines. If for any reason **CONTRACTOR** (or any subcontractors) fall behind on approved schedule, **CONTRACTOR** shall take all necessary actions to bring project back on schedule with no additional expense to the **CITY**.

22. EXTENSION OF CONTRACT TIME DUE TO WEATHER DELAYS: **CONTRACTOR** shall schedule the work to be completed within the contract time stipulated in the **AGREEMENT**. **CONTRACTOR'S** progress schedule shall include an allowance for time lost due to normal adverse weather. "Adverse weather" is defined as atmospheric conditions at a definite time and place that are unfavorable to construction activities. Adverse weather occurrences will not constitute justification for an extension of contract time unless the total time lost due to weather occurrences exceeds ten (10) percent of the contract time stipulated in the **AGREEMENT**. If the total time lost due to adverse weather exceeds the 10%, the contract time will be adjusted for each adverse weather day after the 10% is reached. **CONTRACTOR** shall, throughout the Project, record occurrences of adverse weather and resultant impacts to normally scheduled work, as well as the lingering effects of the occurrence. Adverse weather must prevent work on critical path activities for 50 percent or more of **CONTRACTOR'S** scheduled workday and actually cause a delay to the completion of the Project to be considered an adverse weather delay day. **CONTRACTOR** shall, in a timely manner, submit a written record of each adverse weather occurrence to **CITY** for approval.

23. DEFAULT AND TERMINATION: If either party fails to comply with any condition of this **AGREEMENT** at the time or in the manner provided for, the other party may, at its option, terminate this **AGREEMENT** and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this **AGREEMENT**.

24. LIAISON: The **CITY's** designated liaison for this **AGREEMENT** is John Caterino and the **CONTRACTOR's** designated liaison for this **AGREEMENT** is _____.

25. GOVERNING LAW AND VENUE: This **AGREEMENT** shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit



between the parties arising out of this **AGREEMENT** shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

26. **SEVERABILITY:** Any provision or part of the **AGREEMENT** held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the **CITY** and the **CONTRACTOR**, who agree that the **AGREEMENT** shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
27. **SUCCESSORS AND ASSIGNS:** Neither the **CITY** nor the **CONTRACTOR** shall assign, transfer or encumber any rights, duties or interests accruing from this **AGREEMENT** without the written consent of the other.
28. **OWNERSHIP OF DOCUMENTS:** All documents, data, drawings, specifications, software applications and other products or materials produced by the **CONTRACTOR** in connection with the services rendered under this **AGREEMENT** shall be the property of the **CITY** whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the **CITY** at its request and may be used by the **CITY** as it sees fit. The **CITY** agrees that if the documents, products, and materials prepared by the **CONTRACTOR** are used for purposes other than those intended by the **AGREEMENT**, the **CITY** does so at its sole risk and agrees to hold the **CONTRACTOR** harmless for such use. All or any portions of materials, products and documents produced under this **AGREEMENT** may be used by the **CONTRACTOR** upon confirmation from the **CITY** that they are subject to disclosure under the Public Disclosure Act. All services performed under this **AGREEMENT** will be conducted solely for the benefit of the **CITY** and will not be used for any other purpose without written consent of the **CITY**. Any information relating to the services will not be released without the written permission of the **CITY**. The **CONTRACTOR** shall preserve the confidentiality of all **CITY** documents and data accessed for use in **CONTRACTOR**'s work product.

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

Signature Blocks



ATTACHMENT F
CONDITION REPORT

210 North 27th Street P.O. Box 1178, Billings, MT 59101

ATTACHMENT F

December 22, 2023

**Cushing
Terrell**[®]

City of Billings
Attn: John Caterino
PO Box 1178
Billings, MT 59103

RE: **Babcock Theatre Marquee Assessment**

2812 2nd Avenue North
Billings, MT 59101

Mr. Caterino,

Per the request from the City of Billings, a condition assessment of the Babcock Theatre Marquee in Billings, Montana was performed by members of Cushing Terrell's Structural and Building Enclosure groups on the morning of November 2, 2023. The assessment was requested by the City of Billings in response to recently observed water infiltration through the ceiling of the marquee along with the visible deterioration of the street facing façade.

The Babcock Theatre was originally constructed in 1907 and has since been through several building renovations. One of these remodels occurred in 1955. During that construction period, the current north facing marquee was installed. It is believed that most of the marquee exterior facing components along with internal structural and electrical components remain original with upgrades/repairs performed as required since its original construction.



Figure 1: Historical Reference Photo of Marquee After its Construction in 1955 (Photo Date Unknown)

Field Observations - Marquee Structure

The structural frame of the marquee extends from the wall of the building approximately 12 feet utilizing what is believed to be a steel support framing with a sheet steel roof decking secured over the top. The support structure was then tied back to the brick wall using six steel cables attached at the wall and outer perimeter of the marquee structure. These steel cables are attached to 2" by 2" by 3/16" angle iron which is anchored directly to the steel roof deck supports.

The perimeter signage of the marquee was constructed using light gauge sheet metal secured over steel angle framing. The perimeter signage was also braced back to the roof deck using 1.5" by 1.5" by 1/4" painted angle iron which is also attached to the roof mounted angle iron mentioned above.

The underlying structural framing of the marquee is believed to be in good condition with only minor surface corrosion observed to the steel cabling, angle iron bracing and connection points.

Field Observations - Roofing Systems

The roofing/waterproofing system of the interior of the marquee was installed utilizing a hot asphalt, moped in place roofing system installed directly over a sheet metal deck attached to the signs underlying structure. The asphalt roofing system was also observed with an elastomeric coating applied over top of the asphalt. The installed elastomeric coating is most likely not original to the built-up roofing system and was probably installed many years ago in response to previous leaks and deterioration to the underlying roofing. While on site, both the elastomeric coating and the asphalt built-up roofing were observed to be in poor condition with considerable deterioration to both throughout. Water was also observed dripping through the bottom side of the marquee and onto the sidewalk below.

The main roof area of the marquee drains back towards the building (to the south) and into an internal gutter that sits within the exterior wall line of the building. The internal gutter runs east and west along the entire width of the sign. One small, approximately one inch in diameter, drain outlet is located on the far east side of the internal gutter. While on site, this drain outlet was found mostly blocked with debris and appears inadequate in size to drain the approximate 270 square feet of sign roof area. The connecting piping of the drain outlet was located while on site and was found ran through the ceiling and exterior wall cavity of the Babcock Theatre's adjacent business to the East (Montague's Jewelers). Any recommended revisions to the marquee's drainage system would prove difficult given the drain lines inadequate sizing and rout path through the adjacent space.

The internal gutter within the space inset in the wall was also observed to have been roofed using a moped in place built-up roofing system. This gutter area, however, did not include the added elastomeric coating over the asphalt roofing. The roof system installed through the internal gutter was found in poor condition similarly to the roofing installed throughout the main roof area of the marquee.

A plywood wall substrate board is attached to the building at and above the roof to wall transition where the internal gutter meets the building. The observed wall substrate boards were also visibly deteriorated and in poor condition throughout. The condition of the roof to wall transition and its adjacent wall substrates most likely contributes to the water infiltration currently observed through the sign.

Along the north side of the marquee roof, the roofing system transitions upwards approximately six inches prior to its intersection with the signs interior metal paneling. The change in elevation at the roof to panel transition is adequate, however roofing materials do not currently transition under and/or behind the metal paneling. This lack of waterproofing through the transition most likely contributes to water infiltration through the roofing system.

Field Observations - Interior Metal Paneling

Painted sheet metal paneling covers the interior facing portions of the marquee sign. Access panels and openings are located throughout these panels which provide access and protection to the internal electrical components used to light the exterior signage. The metal paneling was observed to remain in sound condition with only minor surface wear observed. However, as referenced above, the paneling does not provide a watertight transition to the roof nor do the panels appear to keep the signs electrical components adequately protected from the weather.

Field Observations - Exterior Signage

It is believed components making up the exterior marquee's visible signage are largely original. The street facing sign was constructed using painted sheet metal components which surround a sign rail board that lights up from behind and holds removable lettering. The underlying soffit area of the marquee was also constructed with sheet metal installed over the signs structure. Inset can lights hang within the soffit area while hundreds of light bulbs line the perimeter of the sheet metal signage. Along with the light bulbs, neon lighting accents are inlaid in the metal "Babcock" lettering and also wrap the vertical volute above the signs center. After viewing the sign lite up at nighttime, the neon lettering and accents was observed working throughout. The underside soffit lights were also all on with one light appearing dimmer than the others. Seven of the accent bulbs on the west side of the sign and two accent bulbs on the east side of the sign were observed not working, most likely burnt out.

The sheet metal paneling of the sign mostly appears in fair condition with only surface degradation to the paint and some rusting of the bottom sides of the "Babcock" lettering observed throughout. One, approximately 1' by 1' area of the underside soffit, where water was observed dripping through, was found in bad condition, and rusted through. The sheet metal in this area could easily be pushed through if hand pressure was applied to the metal. It is believed the sign was originally painted utilizing lead-based products. An assessment of the paint's makeup should be performed by a qualified industrial hygienist prior to any exterior signage remediation.

Field Observations - Electrical

The marquee's electrical components lie mostly within the interior and exterior paneling of the sign. Openings in the internal paneling provided Cushing Terrell with an observation window to see some of these components. It is believed that most of the electrical wiring of the sign is original to its construction. Repairs and replacements to components over the years is also evident.

Some of the original/older looking wiring is believed to be coated with asbestos and would most likely require abating prior to any replacement of signage electrical components.

Observing the sign at nighttime indicates the electrical components currently in place are working. However, functionality of the sign long term will require a full replacement of the marquee's electrical components and wiring at some point in the near future.

Repair Recommendations - Steel Cabling

In conjunction with replacement of the marquee roofing system, Cushing Terrell recommends the existing support cabling be cleaned free of rust and deterioration prior to installation of a cold galvanizing repair paint over the entirety of the existing cables.

Removal of roof and paneling components for repair or replacement may reveal additional deteriorated structural elements. If additional deterioration is found, Cushing Terrell recommends further evaluation of the revealed issues with repairs performed as required at that time.

Repair Recommendations - Roofing System

In response to the poor condition and water infiltration observed throughout the marquee roof, Cushing Terrell recommends the system be removed and replaced throughout the signs main roof area and internal gutter. In addition to removal of the roofing system, it is recommended that the wall substrates adjacent the building also be removed and replaced.

Removal and replacement of the roofing system could be accomplished by tearing off the existing roofing system in its entirety down to the existing sheet metal decking. Prior to installation of a new roof membrane, tapered insulation, installed sloping from north to south should be utilized to help promote drainage of the sign's roof area. Tapered insulation should also be installed throughout the internal gutter area to further promote drainage to the outlet. Upon installation of the tapered insulation throughout, Cushing Terrell recommends a primed gypsum cover board such as Densdeck Prime be mechanically fastened throughout the roof area with a 60-mil, reinforced Ethylene Propylene Diene Terpolymer (EPDM) single ply membrane adhered to the cover board throughout.

Along with installation of the Densdeck and EPDM throughout the roof area, it is recommended that Densdeck be used to replace the wall substrate boards behind the internal gutter with EPDM baseflashings adhered over the top. This will adequately protect and waterproof the roof to wall area at the building. EPDM baseflashings will also need to be installed underneath the inside wall face paneling to ensure a watertight connection between the new roofing system and the paneling.

Revisions to the roof drain outlet would also be necessary when the marquee is re-roofed. Removal of the sheet metal decking around the drain outlet will most likely be necessary so a drain body can be attached to the outlet piping. A drain assembly will help adequately seal the new roof system to the drain outlet and will also help prevent debris from clogging the drain pathway, further promoting proper drainage of the system.

Repair Recommendations - Internal Metal Paneling

Removal and replacement of the signs internal paneling will be necessary to ensure a water-tight transition at the signs new roof to wall transition. New paneling will also protect the signs somewhat exposed, underlying electrical components. Achieving this would require a design and installation that permits the panels to be easily removed or with access points matching those currently in place to allow for service and or future replacement of enclosed electrical components. A Premanufactured, exposed fastener, metal panel with sheet metal transition

flashings could be installed throughout to accomplish this. Since the metal paneling occurs on the interior sides of the sign, it is not believed modifications to the panels will affect any historical appearance or significance of the sign.

Repair Recommendations - Exterior Signage

At minimum, Cushing Terrell recommends the deteriorated sheet metal at the underside of the sign be cut out with new metal stitched in its place. This would require the underside soffit area, currently painted red, to be repainted throughout to ensure a seamless appearance over the sheet metal repair. Abatement of the lead paint throughout this area may also be required if analysis indicates lead is present in the current materials.

A full restoration of the sign's exterior would be much more in depth. Restoration would require removal of all the signs exterior light fixtures and neon. Removal of those components would be necessary so all existing paint could be stripped from the sign, exposing the raw metal. This would allow for repairs on the sheet metal skin throughout. Upon completion of the repairs, the sign could then be re-painted using care to match the original sign's appearance throughout with new light fixtures and neon installed upon paint/repair completion.

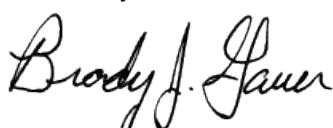
Cost Estimates

Costs associated with the restoration of historical marquees can very greatly. These costs can be greatly affected depending on the depth and overall scope of the restoration pursued. Below are preliminary budgets associated with the repair recommendations outlined above. If the City of Billings desires to pursue a complete historical restoration of the marquee, Cushing Terrell recommends that contractors qualified to perform the work be engaged to help understand the anticipated costs associated with this type of work.

<u>Repair Recommendation:</u>	<u>Budget Cost:</u>
Steel Cabling Clean/Repaint	[REDACTED]
Roof Abatement	[REDACTED]
Roof Replacement	[REDACTED]
Interior Paneling Replacement	[REDACTED]
Electrical Components Replacement	[REDACTED]
Under Soffit Repair/Repaint	[REDACTED]
Lead Paint Analysis	[REDACTED]
Exterior Signage Full Restoration	[REDACTED]

Please see the attached photographs which further outlines the findings of this assessment. Feel free to contact me at bradygauer@cushingterrell.com or 406-896-6142 should you need further assistance.

Sincerely,



Brady J. Gauer,
Roofing and Building Enclosure
cushingterrell.com



Figure 2: Overview of Babcock Theatre Marquee from Street



Figure 3: Overview of Babcock Theatre Marquee Underside



Figure 4: Nighttime View of Sign's West Side



Figure 5: Nighttime View of Sign's East Side



Figure 6: Overview of Marquee Interior East Side Metal Paneling



Figure 7: Overview of Marquee Interior North Side Metal Paneling



Figure 8: Overview of Marquee Interior West Side Metal Paneling



Figure 9: Deteriorated Built-Up Roofing system with Elastomeric Coating over Marquee Steel Roof Decking



Figure 10: Deteriorated Built-Up Roofing system with Elastomeric Coating over Marquee Steel Roof Decking



Figure 11: Deteriorated Built-Up Roofing at South End of Marquee Along Transition to Internal Gutter



Figure 12: Internal Gutter Underneath South Wall of Marquee



Figure 13: Location of Small Drain Outlet in East Corner of Internal Gutter



Figure 14: Condition of Deteriorated Wall Substrate Boards Above Internal Gutter



Figure 15: Locations of Underlying Structural Elements Supporting Metal Roof Decking and Exterior Marquee Paneling
(Approximately 4' O.C.)



Figure 16: Marquee Support Cabling and Angle Iron Bracing



Figure 17: Cable Tie Back Connection at Roof Level

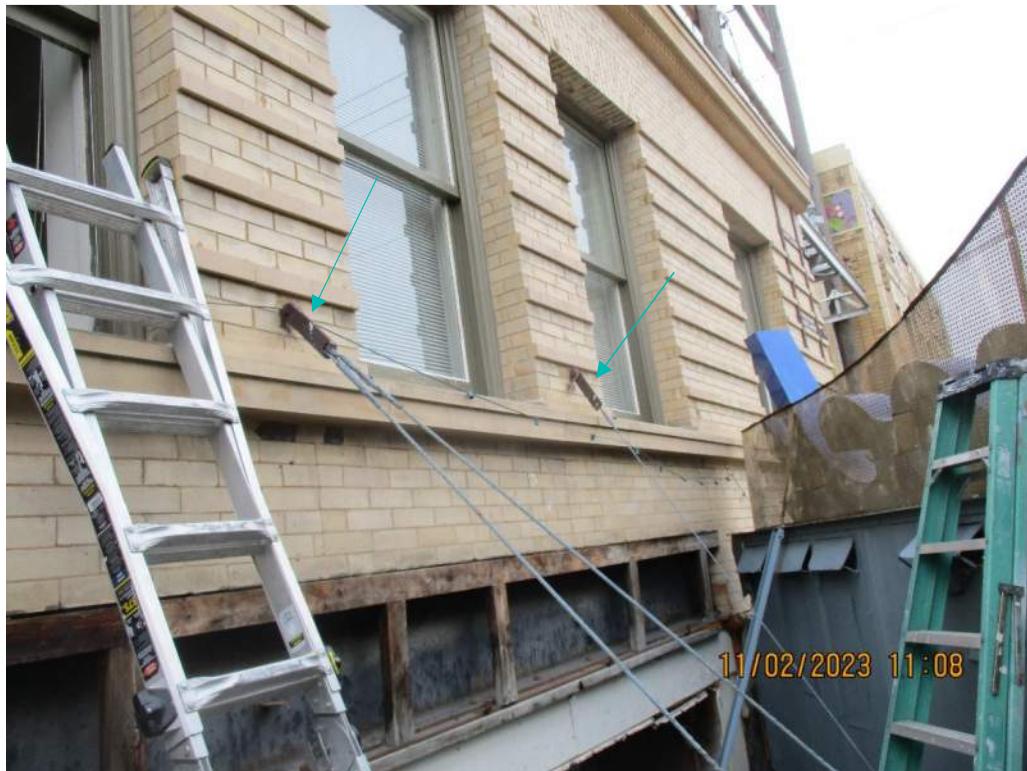


Figure 18: Cable Tie Back Connections at Exterior Wall

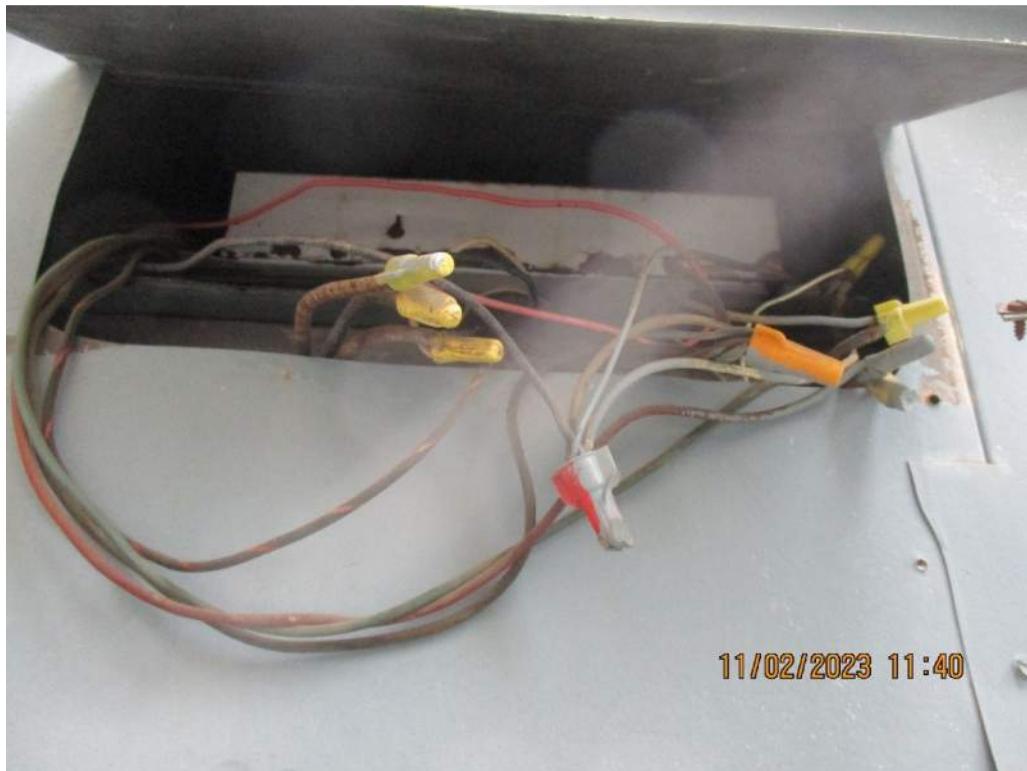


Figure 19: Electrical Wiring Within Interior Paneling Access Locations - Typical



Figure 20: Typical Light Ballast Under Protective Cover at Interior Paneling



Figure 21: Interior Lighting Within Exterior Paneling of Marquee

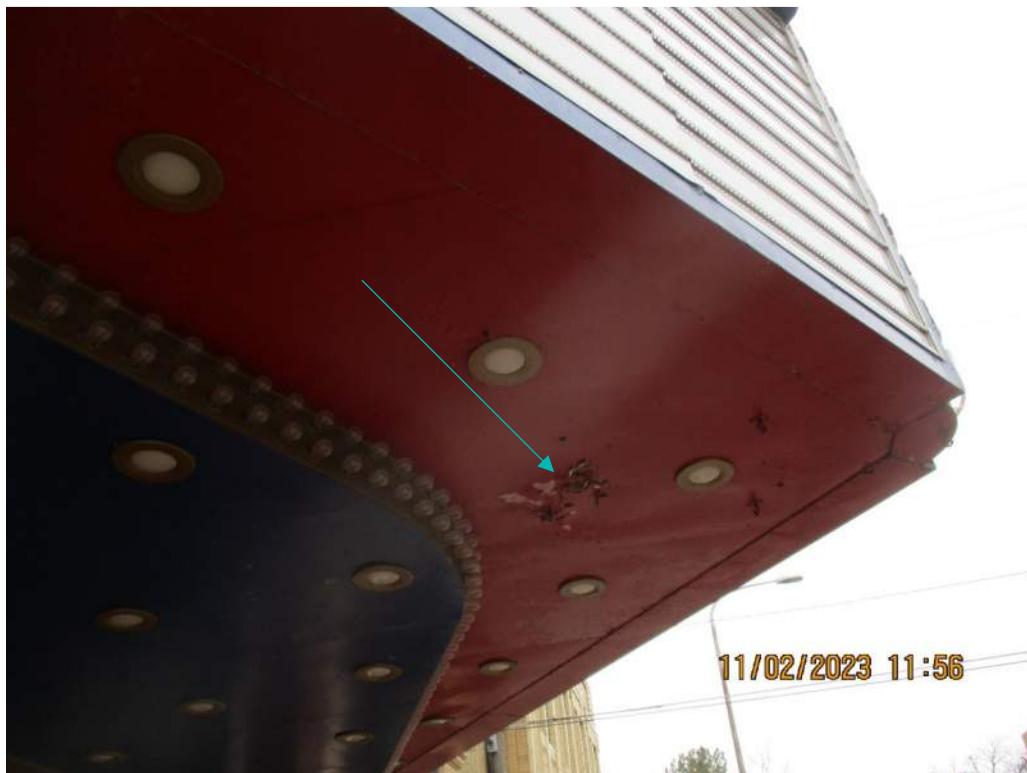


Figure 22: Deteriorated Soffit Metal Below Observed Water Leaking



Figure 23: Observed Deterioration at Underside of "Babcock" Lettering