

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> September 22, 2015		<b>DATE SUBMITTED:</b> September 8, 2015	
<b>DEPARTMENT OF ORIGIN:</b> Solid Waste		<b>SUBMITTED BY:</b> Eric Zaragoza	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Approval of a contract to permit Madison Metals to conduct a commercial roll-off container operation, collecting “scrap metal” only, within the City of Bryan.			
<b>SUMMARY STATEMENT:</b> The City Charter and Solid Waste Ordinance prohibit the private collection of wastes unless otherwise permitted by the City. Furthermore, by ordinance, only the City shall be the municipal solid waste collection provider for residents. Permits are required for commercial collection by private waste haulers as the City of Bryan is considered a “closed city.” Permits can only be obtained for materials not collected by the City or where the City cannot provide adequate container size (e.g. roll off containers or compactors).			
<p>Madison Metals is seeking to obtain a permit to haul scrap metal from desired locations within the City with roll-off containers. Madison Metals roll-offs range from 20 to 25 yard containers. They intend to haul “ferrous and non-ferrous” scrap metal only from commercial, demolition, and construction sites to their facility at 1702 Louis Street. The permit will be limited to collecting scrap metal only and will not charge for these services. Madison Metals will not be hauling other types of waste.</p> <p>Currently, the City of Bryan has four permitted “roll-off” waste haulers. Two of these haulers (Brazos Valley Recycling and Texas Commercial Waste) are permitted to collect solid waste such as garbage, trash, brush and other refuse from approved sites. The others, Torres Salvage and GMY, LTD., are approved to collect scrap metal only. This additional permit will provide more options for citizens when selecting a scrap metal waste hauler.</p>			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> Environmental Services respectfully request the City Council approve the contract to permit Madison Metals to haul scrap metal from commercial sites. Permitting an additional waste hauler will allow the citizens another option when it comes to the collection of scrap metal. This permit also will provide an outlet to recycle metal scraps.			
<b>OPTIONS (In Suggested Order of Staff Preference):</b>			
<ol style="list-style-type: none"> <li>1. Approve the contract</li> <li>2. Approve the contact with modifications, which may require consideration at a future City Council meeting</li> <li>3. Do not approve the contract</li> </ol>			
<b>ATTACHMENTS:</b> Proposed Waste Haulers Agreement			
<b>FUNDING SOURCE:</b> NA			
<b>APPROVALS:</b> Jayson E. Barfknecht 09/09/15; Hugh R. Walker, 09/10/2015			

**APPROVED FOR SUBMITTAL: CITY MANAGER**

**APPROVED FOR SUBMITTAL: CITY ATTORNEY** Janis K. Hampton, 09/14/2015

Revised 05/2013

**PERMIT  
FOR NON-RESIDENTIAL  
ROLL-OFF CONTAINER SERVICE**

The City of Bryan, Texas (City) grants **Paul Madison d/b/a Madison Metals** (Contractor) a permit to collect metal scrap refuse using roll-off containers subject to the following conditions:

1. Contractor is authorized to serve construction, demolition and commercial/industrial sites.
2. Contractor will submit a list of recyclable items to be collected and only collect those items that are approved by the City. The Contractor will transport and process the metal scraps at their facility located in Bryan, Texas. At no time shall any of the material collected be placed in a landfill. All collections made under this agreement will be made by Contractor without unnecessary noise, disturbance, or commotion.
3. At the request of the City, the Contractor will submit reports to the City listing the size, location and tonnage of recyclable material collected within the City under the terms of this Agreement. These reports will be sent to the City Manager or designee.
4. All vehicles used by Contractor for the collection and transportation of refuse must be covered at all times while in transit to prevent the blowing or scattering of refuse onto public streets or properties adjacent thereto, and each vehicle must be clearly marked with Contractor's name in letters of not less than three inches (3") in height.
5. Contractor will properly maintain and clean and paint as necessary all roll-off containers placed for service within the corporate limits of the City. Contractor will clean and paint roll-off containers identified by the City as needing maintenance. Each roll-off container must be clearly marked with Contractor's name in letters of not less than three inches (3") in height.
6. All roll-off containers placed for service within the City must be located in such a manner so as not to be safety or traffic hazards. Under no circumstances will Contractor place roll-off containers on public streets, alleys or thoroughfares without the prior approval of the City. City reserves the right to specify to Contractor the exact location of any roll-off container(s) it places for service within the corporate limits of the City.
7. Contractor will directly receive and resolve any complaints pertaining to service from customers located within the corporate limits of the City. Any complaints received by the City will be forwarded to the Contractor within twenty-four (24) hours of receipt. Contractor must respond to the complaint within twenty-four (24) hours of receiving it from the City.
8. The Contractor understands the City has an agreement with the Brazos Valley Solid Waste Management Association, Inc. (BVSWMA), and this agreement includes a recycling clause. In particular, the Operations Agreement between the City and BVSWMA states in part: 3.06 RECYCLING. *Each City may recycle Recyclable Materials and dispose of the Recyclable Materials with an entity other than the Agency until such time as the Agency enters the recycling business for the same Recyclable Materials and for the same or better price, inclusive of transportation, than the City is then receiving, at which time the City shall deliver its Recyclable Materials to the Agency, subject to any existing agreement terms and conditions. Once the Agency enters into the recycling business, the Cities may not deliver its Recyclable Materials to another entity or person other than the Agency, nor may either City grant a franchise or other contract to another entity or person for such service.* The Contractor is subject to the terms of

this agreement and other agreements between the City and BVSWMA Inc., which currently exist or may exist in the future.

9. This Agreement constitutes the only Agreement between the parties. There are no other agreements between these parties with regard to the collection or disposal of commercial, industrial or residential solid waste in the City. This Agreement is non-exclusive.
10. THE CONTRACTOR WILL DEFEND, INDEMNIFY AND SAVE HARMLESS THE CITY AND ALL ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER, NAME AND DESCRIPTION, INCLUDING ATTORNEY'S FEES EXPENSED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURY OR DAMAGE RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, BY OR FROM THE CONTRACTOR OR HIS EMPLOYEES BY OR ON ACCOUNT OF ANY OMISSION, NEGLIGENCE OR MISCONDUCT OF THE CONTRACTOR, OR BY OR ON ACCOUNT OF ANY CLAIMS OF AMOUNTS RECOVERED UNDER WORKER'S COMPENSATION LAW OR ANY OTHER LAW, ORDINANCE, ORDER OR DECREE. CONTRACTOR SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES IN ACCORDANCE WITH THIS INDEMNIFICATION CLAUSE REGARDLESS OF WHETHER THE INJURY OR DAMAGE IS CAUSED IN PART BY THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.

#### 11. Insurance

- a. The Contractor agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City. All parties to this contract hereby agree that the Contractor's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance. Contractor must deliver to City a certificate(s) of insurance evidencing such policies are in full force and effect within 10 business days of notification of the City's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within 10 business days **may cause the contract to be rejected**. The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.
  - i. Statutory Worker's Compensation and Employer's Liability Insurance - Contractor shall maintain Workers' Compensation insurance for statutory limits and Employers Liability insurance with limits not less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. Contractor shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.
  - ii. Commercial General Liability Insurance - Contractor shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City and its agents, officers, officials, and employee shall be listed as an additional insured.

- iii. **Business Automobile Liability Insurance** – Contractor shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Contractor shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.
- b. **Policy Limits** - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Contractor agrees to endorse City and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure “True Follow Form” basis.
- c. **Deductibles, Coinsurance Penalties & Self-Insured Retention** - Contractor may maintain reasonable and customary deductibles, subject to approval by the City. Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.
- d. **Subcontractors** - If the Contractor’s insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Contractor, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.
- e. **Acceptability of Insurers** - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.
- f. **Evidence of Insurance** – A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within 10 business days by the successful Contractor’s insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City. Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration. Upon request, Contractor shall furnish the City with certified copies of all insurance policies.

The certificate of insurance and all notices shall be sent to:

City of Bryan  
Eric Zaragoza  
PO Box 1000  
Bryan, TX 77805  
Emailed to: [ezaragoza@bryantx.gov](mailto:ezaragoza@bryantx.gov)  
Faxed to: 979 – 209 – 5959

Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of Contractor’s obligation to maintain such insurance.

- g. **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits** – Contractor must provide minimum 30 days prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of such insurance, a new

or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to Contractor until coverage is reinstated.

- h. **Contractor's Failure to Maintain Insurance** – If the Contractor fails to maintain the required insurance, the City shall have the right, but not the obligation, to withhold payment to Contractor until coverage is reinstated or to terminate the Contract.
  - i. **No Representation of Coverage Adequacy** - The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Contractor, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.
12. The Contractor will not dispose of special or other hazardous waste prohibited for disposal at the BSWMA Type I landfill. Contractor agrees to indemnify and hold City harmless for any disposal of any prohibited material, whether intentional or inadvertent.
  13. Contractor requests for variances to this Permit must be submitted to the City Manager or his designee in writing and authorization for any requested variances must be in writing and signed by the City Manager or his designee.
  14. If at any time Contractor fails to perform any of the terms, covenants, or conditions herein set forth, the City may revoke and cancel the permit and this Permit will be null and void. A hearing prerequisite to such revocation will not be held until notice of the hearing has been given to Contractor by Registered Mail, addressed to Contractor at the address shown on the records of the City, and a period of at least 10 days has elapsed since the mailing of the notice. The notice will specify the time and place of the hearing and will include the reasons being considered for revocation of the permit. The hearing will be conducted in public by the City Council. The Contractor will be allowed to present and be given full opportunity to answer any reasons for terminations as set out in the notice. If, after the hearing is concluded, the City Council determines that the allegations set forth in the notice are affirmed by the facts presented at the hearing they may, by majority vote revoke this permit.
  15. Contractor will perform the collection in accordance with applicable laws, codes and regulations of the United States, State of Texas, and Brazos County and in compliance with OSHA and other laws as they apply to its employees. Contractor will ensure that competent persons with experience in managing solid waste or recycling collections supervise all collection operations within the City. It is the intent of the parties that safety precautions are a part of the collection techniques for which Contractor is solely responsible. Contractor assumes responsibility and liability and hereby agrees to indemnify the City of Bryan from any liability caused by failure to comply with applicable federal, state or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.
  16. Contractor will perform the collection in accordance with all applicable ordinances and regulations of the City of Bryan currently in effect or as may hereafter be amended.
  17. All notices required under the terms of this Permit to be given by either party to the other must be in writing, and unless specified otherwise in writing by the parties, must be sent to the parties at the following addresses:

**City:** City Manager  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

**Contractor:** Paul Madison  
d/b/a Madison Metals  
1702 Louis St.  
Bryan, Texas 77803

All notices will be deemed to have been properly served if sent by Registered or Certified Mail, to the person(s) at the address designated above, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

18. No modification to the terms of this Permit may be made unless made in writing and approved by both parties.
19. The Contractor may not assign this Permit without prior written approval of the City.
20. Unless earlier revoked, this Permit is valid for five years following approval by City Council, expiring the \_\_\_\_ day of \_\_\_\_\_, 2020.

**EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2015.**

**AGREED AND ACCEPTED:**

**PAUL MADISON D/B/A MADISON METALS:**

**CITY OF BRYAN:**

\_\_\_\_\_  
Paul Madison

\_\_\_\_\_  
Jason P. Bienski, Mayor

**ATTEST:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**APPROVED AS TO FORM:**

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Janis K. Hampton, City Attorney