

Not Adopted

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING METRO CODE) ORDINANCE NO. 88-260
CHAPTER 5.01, DISPOSAL SITE FRANCHISING,) Introduced by
TO SET REQUIREMENTS FOR A TRANSFER) Councilor Kirkpatrick
STATION FRANCHISE)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The Metro Council Finds:

(a) Chapter 5.01 of the Code of the Metropolitan Service District (hereafter "Code") provides for franchising of disposal sites located within the District,

(b) The Code at Section 5.01.020 describes the findings and purpose of franchising of disposal sites as being founded in the public policy to protect the health, safety and welfare of the District's residents.

(c) The public policy rationale is summarized in Section 5.01.020(b) (1)-(8) as follows:

"(1) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.

"(2) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.

"(3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.

"(4) Prohibit rate preferences and other discriminatory practices.

"(5) Ensure sufficient flow of solid waste to District's resource recovery facilities.

"(6) Maximize the efficiency of the District's Solid Waste Management Plan.

"(7) Provide for cooperation between cities and

counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.

"(8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery"

(d) Waste recycling and diversion from landfilling will be a substantial element of the Metro East Transfer and Recycling Center(s).

(e) There is a conflict of interests between the incentives for recycling and operating a landfill for profit.

(f) The ownership or operation of a transfer station will be used as a waste reduction resource by a company that has a financial interest in a general purpose landfill utilized by the District would result in conflict with District goals to promote waste reduction.

(g) The purpose of Disposal Site Franchising provided for in Code Section 5.01.020 and described above emphasizes the diminution of landfilling which is, in turn, consistent with the state of Oregon hierarchy under Chapter 459.015 of the Oregon Revised Statutes and the regional Solid Waste Management Plan.

(h) The public interests of the citizens of the District can best be promoted by elimination of conflicts in the transfer, recycling and landfill function of the regional waste disposal system.

Section 2. The following section of Chapter 5.01 which establishes the Metro disposal site franchising requirements is amended to read as follows:

5.01.120 Responsibilities of Franchisees: A franchisee:

(a) Shall provide adequate and reliable service to the citizens of the District.

(b) May discontinue service only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. This section shall not apply to any order for closure or restriction of use by any public agency, public body or court having jurisdiction.

(c) May contract with another person to operate the disposal site, processing or resource recovery facility or transfer station only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. If approved, the franchisee shall remain responsible for compliance with this chapter and the terms and conditions of the franchise.

(d) Shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three (3) years by each franchisee for possible review by the Executive Officer.

(e) Shall maintain during the term of the franchise public liability insurance in the amounts set forth in Section 5.01.070(e) or such other amounts as may be required by State law for public contracts and shall give thirty (30) days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage or performance bond.

(f) Shall file an annual operating report on forms provided by the Executive Officer on or before March 1 of each year for the preceding year.

(g) Shall comply with all provisions of this chapter, the Code, ORS ch. 459, DEQ permit and franchise agreement.

(h) Shall submit duplicate copies to the Executive Officer of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or disposal franchise during the term of the franchise. Such correspondence, exhibits or documents shall be forwarded to the District within two working days of their submission to DEQ.

(i) Shall indemnify the District, the Council, the Executive Officer, the Director and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the franchisee's performance of or failure to perform any of its obligations under the franchise or this chapter.

(j) Shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid.

(k) Shall, if the franchisee accepts solid waste from the general public and from commercial haulers other than the franchisee, implement a program based on District guidelines approved by the Council for reducing the amount of solid waste entering disposal sites, processing facilities, or transfer stations.

(l) Shall not, either in whole or in part, own, operate, maintain, have a proprietary interest in, be financially associated with or subcontract the operation of the site to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection. (Ordinance No. 81-111, Sec. 13)

(m) Shall not, for a privately owned or operated transfer station which is intended to serve as a waste reduction station, either in whole or in part own, operate, maintain, have a proprietary interest in, be financially associated with or subcontract the operation of a general purpose landfill utilized by the District.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1988.

NOT ADOPTED

Mike Ragsdale, Presiding Officer

ATTEST:

Clerk of the Council

88260.ORD
8/03/88
DEC:gpwb

OREGONIANS for COST-EFFECTIVE GOVERNMENT

P.O. Box 384 • Lake Oswego, OR 97034 • (503) 636-4003

John Bradshaw
Chairman

August 2, 1988

Jon Egge
Doug Nicoli
Vice Chairmen

TO: Metro Council
Solid Waste Committee

Don Robison
Secretary
Treasurer

Subject: Ordinance No. 88-260

Jeanne Robinette
Executive
Director

The private sector can be your work horse. It can operate more effectively, more efficiently. It has its own reasons to innovate, to invent, to manage a tight shop. It invests its own money.

Board of Directors

Joseph Beemer
Bob Behnke
John Bradshaw
Steve Buckstein
Jon Egge
Don Jacobson
Bill Moshofsky
Doug Nicoli
Jeanne Robinette
Don Robison
Tom Rodrigues

I am convinced that if Metro is to build a solid waste system ratepayers can afford, if you are to get a transfer station on line in time for the St. John's closure, you are going to need to call on private firms all over the region. You're going to need their best thinking, their best prices. Don't discourage them now.

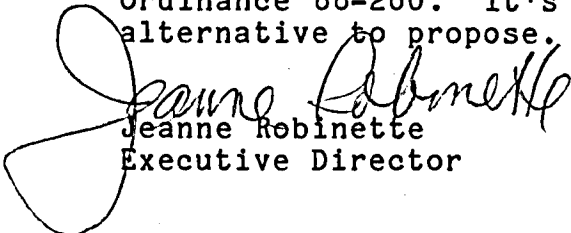
Some of you are afraid of forming a monopoly. That's a reasonable concern. Monopolies usually cost lots of money, whether they are private or public. Metro, after all, is the monopoly that has spent a bundle trying to develop a solid waste disposal system. I understand some very good private offers were turned down years ago.

I said private firms could be your work horses. To control a loose work horse, you don't use a box or a gun. They won't fit in boxes and if you use a gun they won't be around to work for you. To control a work horse you use a harness.

That's what your gatehouse will be, a harness. That's what contract language can be, and RFP specifications and performance bonds. Use them to harness the private sector to work for us, together with the criteria adopted by the Council last week.

Use the months ahead to review and work on draft contract language and specifications. Perhaps we can help you convince the staff to gather together some of the ideas they already have, some of the language they used in Riedel's composting contract, for example. I'm sure they didn't trust that private firm either. Tell them you want to build an effective harness.

Please, don't approve the proposed amendment to Ordinance 88-260. It's a gun, not a harness. I have an alternative to propose.


Jeanne Robinette
Executive Director

DISPOSAL SITE FRANCHISING
(Or somewhere else appropriate)

Suggest you eliminate 5.01.120 (1) and add a new section:

5.01.121 - Preventing monopoly ownership of facilities.

In order to prevent monopoly control of the solid waste disposal system:

(a) Integration of private vendors in the solid waste system will be structured so that no single provider controls collection, recycling, transfer, transportation and disposal;

(b) Metro shall control the gatehouse to the transfer facility, where it can monitor the waste stream, monitor fees charged, set recycling targets and tip fees, manage recycling incentives and bonuses, set fares, etc.;

(c) Competitive proposals will be sought;

(d) Comparative costs of a publicly owned facility, land available as well as development and operating costs, will be estimated before private bids are opened.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Agenda Item No. _____

Meeting Date _____

Date: September 13, 1988

To: Council Solid Waste Committee

From: Ray Barker, ^{RB} Council Analyst

Regarding: ORDINANCE NO. 88-260, REQUIREMENTS FOR A TRANSFER
STATION FRANCHISE

This memo is in response to a request by the Council Solid Waste Committee for additional information regarding requirements for a transfer station franchise.

On August 16, 1988, the Council Solid Waste Committee considered Ordinance No. 88-260, for the Purpose of Amending Metro Code Chapter 5.01, Disposal Site Franchising to Set Requirements for a Transfer Station Franchise. The Committee requested that Richard Botteri of Weiss, Descamp and Botteri, representing Oregon Waste Systems, Inc., and Merle Irvine of Wastech, Inc. submit information regarding possible abuses in the solid waste disposal system should a monopoly be created and to suggest what measures could be taken to prevent these abuses. Council staff was asked to review the information and frame questions to assist the Council in its consideration of Ordinance No. 88-260.

Questions

To date Council staff has not received the information requested from Richard Botteri or Merle Irvine. The information is expected on September 15. It will be given to the Council Solid Waste Committee as soon as possible. The following questions should be considered:

1. How can Metro best strike a balance between transferring waste at a low cost and strengthening waste reduction in the region?
2. Should Metro accept proposals from vendors that may create a monopoly in the solid waste disposal system?
3. If a monopoly is created, what are the opportunities for abuse in the solid waste disposal system and what measures can be taken to prevent these abuses?

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September 13, 1988
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4. Should Metro require each bidder to guarantee a minimum rate of recycling?
5. How would Metro manage this system? (How would it work? How would rates be set?)

Additional questions will be framed upon receipt of the information from Mr. Botteri and Mr. Irvine.

ECO Report

Attached is a copy of the ECO Northwest report regarding ownership and operation of the East Transfer & Recycling Center (ETRC).

ETRC White Paper

The Planning Technical Committee and the Planning Policy Committee approved a White Paper on the ETRC. Attached is a copy of the Privatization section of the White Paper.

RB/sm
0155D/D2

Attachments

2. PRIVATIZATION

BACKGROUND

Metro's existing solid waste system is multi-dimensional. Some facilities are publicly owned with Metro-contracted field operations, and some facilities are privately owned and operated. The Metro South Station (CTRC) is owned by Metro with field operations contracted privately. The limited purpose landfills, yard debris centers, recycling centers, and processing centers are all privately owned and operated.

Existing Metro policy per resolution No. 84-506 states:

"Metro will own and operate three transfer stations in the Portland metropolitan area..[including]...a third station in the City of Portland to become operational upon closure of the St. Johns Landfill."

The Technical Committee recommended at its December meeting that the Metro East Station should be privately owned and operated with Metro control of the gatehouse. The purpose of having Metro be the gatekeeper was to ensure fair fee collection at the station. Further, the Committee recommended that an early notice be posted in January, 1988 to request that potential vendors obtain land use permits for proposed transfer station sites.

The rationale behind the Committee recommendation on privatization and early notice of the Metro East Station was as follows:

1. A Metro East Transfer Station needs to be on line by January, 1990. It is estimated that two construction seasons are necessary to build the facility, thus construction should begin by Summer, 1988. Siting of the facility should begin at least by January, 1988.
2. The private sector has an advantage in identifying a site quickly. Historically, Metro has experienced a lengthy siting process for solid waste facilities. Because the public sector is "charged" with locating the "best site," the site selection process is relatively lengthy. This process includes developing criteria and rating sites. It took two years to locate a site for the West Transfer and Recycling Center. The private sector has the ability to locate a "workable site" in the time required to get the facility on line.

3. The status of land use permits will be a critical element of the Metro East Station proposals. Metro should send notice in January, 1988, requiring vendors to have 1) the necessary land use permits or 2) a land use and construction schedule which indicates construction will be complete by early 1990.

At its December meeting the Policy Committee amended the Technical Committee's recommendation to state that the Metro East Station may be privately owned, thereby leaving both public and private options open for further consideration. On January 8, 1988 the Policy Committee added two conditions to the recommendation.

1. Before a contract is awarded, the costs of the private bids must be compared to the costs of a publicly-owned facility to ensure that ratepayers' interests are protected; and
2. Metro should conduct adequate public involvement activities before selecting a Metro East Station proposal site. These public involvement activities should occur in addition to those which must occur in most cases at the local government level before land use permits can be obtained.

The recommendation for potential private ownership and operation of the Metro East Station was presented to the Metro Solid Waste Committee at its January 12, 1988 meeting. The CSWC returned the issue to the planning project for additional work, and later identified the following five questions for which answers were requested:

1. What is to be gained by private ownership and operation?
2. What is to be lost by private ownership and operation?
3. How would Metro manage the system? (How would it work? How would rates be set?)
4. How quickly can Metro site a facility, if it were to be publicly owned?
5. How will the public involvement process work?

Staff addressed the five questions from the CSWC. In addition, the consulting firm of ECO Northwest was hired to conduct a literature search on public versus private ownership and operation of solid waste facilities. The

report on that literature search is attached as Appendix 7. Finally, staff worked with the Land Use Subcommittee to further develop public siting options. These options are also attached as Appendix 8 to this report.

On February 12, 1988, the Policy Committee reviewed and discussed the Technical Committee's Metro East Station white paper recommendations, the Land Use Subcommittee siting options, and the ECO Northwest report. The Policy Committee concluded that a decision on private versus public ownership should occur at the time Metro analyzes private vendor proposals against public options. They further concluded that it is in Metro's best interest to conduct a simultaneous siting and proposal process for the Metro East Transfer and Recycling Center(s).

ANALYSIS

This section is organized to address the five questions identified by the Council Solid Waste Committee.

1. What is to be gained by private ownership and operation?

It has been determined that it is necessary to have the Metro East Station on line by January, 1990. It is estimated that 18 months are necessary to design and construct a transfer station facility. That means that the facility must be sited and permitted by Summer, 1988.

One reason for the planning project's recommendation that the Metro East Station be privately owned and operated is the prospect it creates for a more efficient siting process. Historically, Metro has experienced a lengthy site selection process for solid waste facilities. For instance, it took two years to locate a site for the West Transfer and Recycling Center. One explanation for this is that the public sector is expected to identify the "best" possible site. This requires a comprehensive analysis of all reasonable sites. Conducting the technical analyses and public involvement activities for numerous sites increases the time required to complete the process and ultimately select a site (see further explanation under Solid Waste Committee Question No. 4 below).

The private sector generally seeks to identify a "working site" and is not committed to the same lengthy process as the public sector. As an example, a three-to-six-month site selection and permitting process is

possible as demonstrated by Riedel Environmental Technologies for their proposed compost facility.

The need to site a facility quickly was not a consideration when Metro first analyzed the merits of public versus private ownership and operation in 1980 through the Price Waterhouse Study. This need represents an important new decision-making criterion.

The planning project has elicited a great deal of interest and support for private ownership from industry representatives, citizens and local governments alike. At a minimum, Metro's past difficulties with public siting processes would seem to warrant another analysis of the merits of public versus private ownership. Requesting bids for a privately owned Metro East Station is a lower risk method for Metro to gain valuable knowledge about the advantages and disadvantages of private ownership of transfer stations than trying to resolve this issue for the entire system at this time.

In a sense, the Metro East Station process would be a test case for private ownership. If the expected advantages do not materialize all parties will have better information on which to base decisions about public versus private ownership for the remainder of the system. This limited test of the privatization concept poses fewer risks to Metro than making a decision to privatize the entire transfer station system. It is understood that the decision on ownership of Metro East Station is not to be viewed as a precedent for public versus private ownership decisions for the remainder of the system.

2. What is to be lost by private ownership and operation?

Metro contracted with Price Waterhouse and Company to analyze the comparative costs and benefits of public versus private ownership before it adopted its current policy in support of public ownership. The resulting report, "Recommendations for Developing a Comprehensive Management Program to Administer a Solid Waste Facility Franchise and Disposal Rate Control System," October 17, 1980, was never adopted by the Metro Council. However, it is worthwhile to understand the rationale included in the report which supports its recommendation for public ownership.

Five of the seven disadvantages to private ownership and operation cited in the report relate directly to Metro's lack of ability, at the time, to exert sufficient

management control over a private facility (e.g., administrative control, collusion to reduce competition, cutthroat competition, overlapping service areas, lack of control over fees).

These concerns were valid in 1980. In September, 1981, Metro adopted a Franchise Code (Ordinance No. 81-111). The Franchise Code provides Metro the tools to minimize or eliminate these potential disadvantages of private ownership. In fact, the Price Waterhouse report states that each of these five "Potential disadvantage(s) assumes that there is no regulatory control system. If such a system exists, [each] disadvantage is eliminated." (Price Waterhouse, Exhibit I - 1(3), see Appendix 2)

The other two potential disadvantages listed by the Price Waterhouse study were that "Metro may have to regulate private firms" and "Metro may have to identify acceptable firms and grant franchises." Neither of these considerations is relevant in 1988, seven years after Metro adopted a Franchise Code.

The analysis under the third question posed by the Metro Solid Waste Committee (How would Metro manage the system?) details the specific controls Metro could use to exert adequate oversight of the facility.

Another potential disadvantage of private ownership and operation would be an inadequate public involvement process in selecting the site. The Policy Committee was concerned about this issue and added a condition to the recommendation to privatize the Metro East Station to ensure that legitimate public concerns were heard by Metro before making a Metro East Station siting decision. A description of the proposed public involvement process is included under the fifth Solid Waste Committee question (How will the public involvement process work?).

It is worth noting that issues related to the economic advantages and disadvantages of public versus private ownership were not a consideration of either the Policy Committee's recommendation for privatization or the Price Waterhouse recommendation for public ownership. Although the Facilities Subcommittee of the Technical Committee concluded that economic benefits would be realized by private ownership, the Policy Committee based its recommendation solely on the compelling need to get the facility sited in a timely manner. As a safeguard, to ensure that the cost of a privately owned station did not exceed the cost of public ownership, the

Policy Committee added a condition to require that a comparison be made of the private bids with the cost of public ownership.

3. How would Metro manage the system? (How would it work? How would rates be set?)

Metro Code Sections 5.01 (disposal site franchising), 5.02 (disposal charges and user fees), and 5.03 (disposal site franchise fees) provides the necessary oversight and management assurance mechanisms to ensure that the privately owned and operated Metro East Station is operated consistently with Metro's responsibility of providing efficient solid waste services for the region.

Specifically, Metro Code Section 5.01.030(a) states:

"it shall be unlawful for any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee."

Further, Section 5.01.080(a) states that the Metro Council shall establish the rates collected at a franchised facility. No franchisee shall charge a rate which is not established by the Council.

Generally, the Metro Code provides Metro the following central mechanisms to ensure that the facility is efficiently carrying out its objectives for the region.

- Each month, the franchisee must file a statement to include number of truck loads received daily, total number of cubic yards received during month, explanation of any adjustments made to fees paid. Misrepresentation of any of the information required shall be grounds for suspension, modification or revocation of the franchise.
- The Executive Officer or authorized agent may examine the books, papers, records and equipment of any operator at any time during normal business hours.
- The Executive Officer or agent may, at any time, make an investigation to determine if there is sufficient reason or cause to suspend, revoke or modify a franchise.

- The District may purchase or condemn any real or personal property or any interest therein of the franchisee.
4. How quickly can Metro site a facility, if it were to be publicly owned?

Metro's experience with siting and permitting solid waste facilities, including Transfer and Recycling Centers, has been that the process is extremely lengthy with many contingencies. The contingencies generate additional meetings and public process which makes time estimates for public facility siting difficult and unreliable. Most public siting and permitting efforts for solid waste facilities have the same experience due to the controversial nature of such facilities.

Metro's most recent siting and permitting experience was for the West Transfer and Recycling Center (WTRC). WTRC took three years from initiation of the process to a final land use decision (denial upon appeal).

It is estimated that an optimistic, fast-tracked public siting effort for the Metro East Station would take eight to twelve months. As stated above, such estimates are difficult and often unreliable due to the many contingencies which may arise during a public siting process. It should also be noted that such an eight-to-twelve-month timeline is unprecedented. This estimate is based upon the following:

• Develop and adopt siting criteria	3 months
• Identify sites and select top 2 or 3	33 months
• Public hearings and decision months	2
• Obtain Conditional Use Permit <u>months</u> (if needed)	<u>4</u>
TOTAL	8 - 12 months

The City of Portland is presently the only jurisdiction in the metropolitan area which allows solid waste transfer stations as an outright permitted use in industrial zones (Heavy Industrial, General Industrial, and General Employment zone districts). Only about one-third of the City's industrial land base is currently in the above zones, and current estimates from the Portland

Planning Bureau staff are that the remainder of the properties will not be legislatively rezoned to the above designations until late summer or fall, 1988 (pending adoption of new environmental regulations: the new "E" Zone). Therefore, many of the potential properties within Portland, and all potential properties in other jurisdictions, would require a conditional use permit.

Metro's functional planning authority authorized under ORS 268.390 could not be expected to decrease the siting time frame described above. That authority allows Metro to review local comprehensive plans and require changes in them to assure that the comprehensive plan "and any actions taken under it" conform to the functional plan. To implement this authority, Metro must adopt a functional plan, identify changes to local plans, and officially request or require the desired changes. Then local government must go through the procedural steps to legislatively amend its plan. Procedurally, functional planning is not a fast-track process.

It does not appear possible for Metro to site the Metro East Station by Summer, 1988 through a public siting process.

5. How will the public involvement process work?

The first level of public involvement in siting the Metro East Station will occur at the local government level through established planning procedures for obtaining land use permits. Local governments will notify affected property owners of an application for a conditional use or equivalent permit. A public hearing will be conducted for any such site requiring a conditional use permit before such permit is issued.

A few zones in Portland allow solid waste transfer stations as an outright permitted use. Proposals in these zones will not require a public hearing. However, Portland's comprehensive planning process for establishing transfer stations as an outright use in these zones included extensive public involvement, as required by state and local law. The City's finding that transfer stations are compatible with other uses in these zones means that the local government does not believe additional public involvement is required in order to authorize the use in certain zone districts.

Public involvement should play a role in Metro's decision-making process, regardless of how many proposals it is considering or their zoning status.

This is because Metro's responsibility is to choose the best proposal from those submitted. It may be appropriate for Metro to hold two or three public involvement meetings after proposals have passed the local government screening process (i.e., received land use permits) and after Metro's proposal evaluation process (See Recommendation 8) has identified the top proposals. Metro public involvement meetings should be held in the neighborhoods which would be affected by the proposals.

The public involvement process recommended here is advantageous because it allocates appropriate responsibilities to the local governments and Metro. At the local level this approach takes maximum advantage of, rather than duplicates, the public involvement which is inherent to local land use approvals. When it is time for Metro to choose between the best proposals, it should turn to its constituency, which transcends jurisdictional boundaries, to help make the final decision. This approach will allow all parties who need or want to be involved an appropriate forum to participate in the decision-making process.

FINDINGS

1. The Metro East Station needs to be operational by January, 1990. This means that the Metro East Station should be sited by Summer, 1988 in order to allow the needed time to design and construct the facility (approximately 18 months).
2. Past experience indicates that private ownership and operation is more likely to result in selection of an adequate site by July, 1988 than public ownership and operation.
3. In 1981 Metro adopted a Franchise Code Ordinance. This Code provides Metro with adequate authority to ensure that a privately owned and operated Metro East Station is operated to serve the public's interest.
4. The proposed RFP process for siting the Metro East Station will:
 - Ensure that high quality site selection criteria are applied;
 - Retain Metro's ability to reject all bids if no adequate sites are submitted;

- Ensure adequate public involvement in the decision-making process; and
 - Allow Metro and the region to gain valuable knowledge about the merits of private ownership and operation which will increase the quality of similar decisions which must be made about the remainder of the transfer station system.
5. Private vendors will have a better chance of obtaining necessary land use permits by Summer, 1988 if such vendors initiate the land use permitting process in January, 1988.

CONCLUSION

The Metro East Transfer Station may be privately owned and operated with Metro control of the gatehouse, or the facility may be owned by Metro and operated by the private sector. Notice should be posted in January, 1988 to request that potential private vendors obtain land use permits for proposed transfer station sites. At the same time, Metro should develop a public proposal. The decision on public or private ownership should be based on a cost comparison between the two options.




METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: September 14, 1988

To: Gary Hansen, Chair
Council Solid Waste Committee

From:  Rich Owings, Solid Waste Director

Regarding: Quality Control at Private Transfer Station

BACKGROUND

At the Committee's August 16th meeting regarding Ordinance No. 88-260 (Amending Code for Disposal Site Franchising) the Committee heard testimony from potential vendors of a private East Transfer Station. The Committee asked for the Solid Waste Department's assessment of the quality control issues raised at the hearing.

The issue as I understand it is - how can Metro, through contracts, assure that all users will be treated fairly and that maximum waste reduction is being implemented at the station. Specifically, should a landfill and/or collection vendor be allowed to own and/or operate Metro's transfer station(s)?

Clearly the Council by ordinance has the authority to determine this policy. The Administration can implement contracts that allow or prohibit vertical integration. That is, I see no implementation problems that can not be managed no matter what action the Council takes on Ordinance No. 88-260. In fact, the Council has through variances permitted a collection company to own and operate a transfer station (e.g., Forest Grove Transfer Station). Further, it should be noted that our current private operator at the Metro South Station benefits from recycling rate incentives they validate for high-grade loads (e.g., Wastech/OPRC).

CONTROLS

The franchise code gives Metro the power to obtain from franchisee any information necessary to determine conformance with franchise conditions. These broad powers are generally used in calculating a "fair rate of return," but could be used to assure compliance with any franchise condition such as recovery.

Gary Hansen
September 14, 1988
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Concerning other perceived dangers of vertical integration such as hauler preference, excessive profits etc., Metro could use these franchise powers to mitigate/eliminate these effects.

The powers given to Metro by the franchise code could be incorporated in a contract, or the contract could be part of the condition of the franchise.

In adopting the policy that ETRC may be privately owned, the Council made it clear that Metro would staff and manage the gatehouse, thus, all fees, charges, etc., would be controlled by Metro. In addition, we are proposing to install live television monitors in the RET compost facility which will allow staff inside the gatehouse to monitor activity inside the facility. These monitors could be used to prevent processing problems and/or discriminatory practices by the vendor.

INCENTIVES/PENALTIES

On the issue of maximum waste reduction, it should be noted that the Solid Waste Policies currently under consideration indicate priority will be given to source separation. An integrated approach will be needed to reach our 52 percent recycling goal; however, post collection separation (i.e., at the transfer station) will not be our only or primary means of waste reduction.

The attached matrix lists seven methods of achieving post collection waste reduction at the ETRC. It is easier to implement and manage the incentive methods since they are self policing. Mandated levels of waste reduction will be difficult since over time the waste stream will change, that is, contract conditions will change.

RDO: aey

Attachment

cc: Rena Cusma, Executive Officer
Ray Barker, Council Analyst

METHOD	PROS	CONS	COMMENTS
1 Mandate a recycling rate	<ul style="list-style-type: none"> -Simple structure -Provides a certain recycling rate -Firm evaluation criteria -Set enforcement mechanism -Does not increase system cost 	<ul style="list-style-type: none"> -No incentive to recycle over minimum -Inflated bids due to risk of unavailability of recyclables -Requires auditing 	<ul style="list-style-type: none"> -Metro's enforcement powers have not been tested
2 Increase share of recycling revenues as recycling rate goes up	<ul style="list-style-type: none"> -Recognizes increasing costs of recycling as recycling rate goes up -Does not increase system cost 	<ul style="list-style-type: none"> -Recovery rates dependent on market prices & profit margin on landfill -Requires auditing 	
3 Transfer/transport combined contract	<ul style="list-style-type: none"> -No Metro involvement -No auditing required -Natural incentive to recycle IF transportation costs higher than recycling costs 	<ul style="list-style-type: none"> -Applicable only to package deal -May be paying too much/little due to uncertainty of transportation or recycling costs 	<ul style="list-style-type: none"> -Incentive depends on structure of transportation contract
4 Guarantee equivalent profit	<ul style="list-style-type: none"> -Removes disincentive to recycle 	<ul style="list-style-type: none"> -Requires knowing landfill & transfer component profits -Increases system cost -Requires auditing 	
5 Pay premium for waste recycled rather than landfilled	<ul style="list-style-type: none"> -Simple -Strong incentive to recycle -Market-driven 	<ul style="list-style-type: none"> -Could be excessive profit given to operator -Requires auditing -Increases system cost 	
6 Mandate a minimum recycling rate. Scale the fee up as the recycling rate increases	<ul style="list-style-type: none"> -Recognizes increasing costs of recycling as recycling rate goes up -Firm evaluation criteria 	<ul style="list-style-type: none"> -Requires auditing -Increases system cost 	
7 Vendors bid recycle amts. & price. Contract to be signed at specified recycle rate	<ul style="list-style-type: none"> -Know what you are buying -Set enforcement 	<ul style="list-style-type: none"> -Difficult evaluation criteria -Inflated bids due to risk of unavailability of recyclables 	



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
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Agenda Item No. 5

Meeting Date Oct. 18, 1988

October 12, 1988

The Honorable Gary Hansen
Chair, Council Solid Waste Committee
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Chairman Hansen:

Re: Transfer Station Procurement

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Corky Kirkpatrick
Deputy Presiding
Officer
District 4

Richard Waker
District 2

Jim Gardner
District 3

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

At the request of Council Presiding Officer Mike Ragsdale, the Office of General Counsel, and Council staff were requested to sponsor a meeting with Oregon Waste Systems, Inc. and representatives of the Wastech/Riedel Joint Venture to determine if common ground existed on how Metro could structure a transfer station procurement process that protects Metro's interests regarding issues identified in proposed Ordinance No. 88-260 (landfill operator involvement) and Metro Code Section 5.01.120(1) (hauler involvement) consistent with the perceived need to maintain competition for any transfer station procurement.

The Presiding Officer requested that staff meet with the interested parties and prepare a report to the Solid Waste Committee of the results of any meetings and the staff conclusions on the information furnished at the meeting regardless of whether common ground was identified by the meeting participants.

As a result of Councilor Ragsdale's request, a meeting was called for on September 20, 1988, at the Metro Center. Those in attendance at the initial meeting were Rick Daniels, Richard Botteri and Ray Bartlett from ECO Northwest representing Waste Management, and Nancy Craven and Wayne Trewhitt representing Wastech/Riedel. Council staff included Don Carlson and Ray Barker, and Dan Cooper from the Office of General Counsel. At this meeting representatives of Wastech/Riedel raised procedural concerns regarding the possible appearance of collusion if the meeting were continued with both companies represented at the same time. Because these concerns were perceived, the Office of General Counsel determined that it would be more appropriate for Metro to receive input from the interested parties in a series of separate meetings rather than all at the same time, even

The Honorable Gary Hansen
October 12, 1988
Page 2

though the possible antitrust liability was very minimal. Separate meetings then were held with the interested parties.

Oregon Waste Systems, Inc.

On September 20, 1988, General Counsel Dan Cooper, Council Administrator Don Carlson and Council Analyst Ray Barker met with Rick Daniels, Vice President and General Manager of Oregon Waste Systems, Inc.; Richard Botteri, Attorney, and Ray Bartlett of ECO Northwest. The following points were made by Oregon Waste Systems, Inc. regarding transfer station procurement:

1. Oregon Waste Systems' participation in the transfer station bidding process would probably make other bidders more competitive and result in lower tipping fees.
2. Regarding someone in the collection business operating the transfer station: if a hauler operates the gatehouse, there is real potential for system abuse. If Metro runs the gatehouse, Metro can prevent abuse by using such measures as video cameras and controlling all entrances and exits.
3. Oregon Waste Systems, Inc. would guarantee a recycling rate at the transfer station.
4. Metro should have more than one vendor for its transfer stations. This would enable Metro to compare costs, operations, recycling, etc. between the stations.
5. The more an aggressive curbside recycling program is implemented, the less recycling will occur at the transfer station.
6. Metro has flexibility to protect its interests through turnkey or "buy out" clauses.

Wastech/Riedel

On September 20, 1988, General Counsel Dan Cooper, Council Administrator Don Carlson and Ray Barker met with Wayne Trehitt, President of Wastech, Inc.; and Jack Orchard, Attorney. Wastech, Inc. officials made the following points concerning transfer station procurement:

1. A competitor has an advantage if they have vertical

integration.

2. When you operate a transfer station, you gain knowledge about your competition. For example, you know where high-grade loads are coming from. This gives a hauler a competitive advantage. It also makes a recycling guarantee less meaningful.
3. Regarding recyclables, subjective calls need to be made to determine what the load is -- what category to use (assumes price differential).
4. The person making the determination as to what is in a load should be an employee of the company doing the recycling, then more recycling will take place.
5. Wastech fears a transfer station/hauler competitor may by predatory pricing direct high-grade loads and put OPRC out of business.
6. A recycler without an interest in the landfill will do more recycling.
7. One way to deal with vertical integration is to franchise the collection system.
8. If you have a guaranteed rate of recycling at the transfer station, that is all you will get. No incentive to go beyond the minimum rate.
9. They understood that Metro would probably not be well served by excluding competition from the process even if their arguments were accepted as compelling a final decision in their favor.

Staff has reviewed the various points made by the interested parties. We have also taken into consideration the information that is contained in the separate letter dated October 4, 1988, a copy of which is attached, from Dan Cooper to Ray Barker regarding the possible issuance of exclusive franchises for transfer stations. The Office of General Counsel and Council staff concludes that Metro can go forward with a transfer station procurement process through the use of a Request for Proposals for an exclusive franchise for the East Wasteshed that would allow competition from both Oregon Waste Systems and Wastech/Riedel, and possibly others. Metro should build safeguards into the RFP and eventual franchise agreement that would protect Metro's interests in the areas of safeguarding against possible vertical integration of the waste

system in the Portland region, and also to encourage to the maximum extent feasible, the recycling of materials from mixed waste deposited at a transfer station. At a minimum, staff recommends that any franchise issued include a requirement for Metro operation of the gate and commitments, spelled out clearly in enforceable language in a franchise agreement of the operator's commitment to recycling and the methods to be used to promote recycling efficiency, including possible guarantees.

In addition, it may be desirable for Metro to further protect its interests by using some or all of the following terms and conditions. These should not be viewed as an all inclusive list of options. They are put forth to show the range of solutions available.

1. Metro should consider whether it wants to include a requirement that the transfer station procurement be a "turnkey" system in which Metro would obtain legal ownership of the property either after completion of construction or prior to the expiration of the initial franchise term with protections built in to guarantee the successful applicant a reasonable profit on its investment. This could be combined with or be replaced by a provision allowing Metro to purchase the transfer station facility at a sum certain or agreed upon price to be established by binding arbitration. This clause could address the operator's expectation for payment for the hard costs as well as the "future value" of the franchise agreement. A default in the franchise agreement could trigger a buy out with no payment for the future value of the franchise.
2. Metro should consider utilizing Metro employees to make all determinations regarding fees to be paid by haulers entering the facility, including using Metro employees to make the determination as to the percentage of recyclables contained in any given load. Further, Metro might consider making all information regarding load origination and content a "public record" available to any and all haulers who sought this information for the purpose of assisting their future marketing efforts in order to make the hauling industry as competitive as possible.
3. Metro should consider placing restrictions on the market share of the hauling industry that any transfer station operator can obtain particularly in

The Honorable Gary Hansen
October 12, 1988
Page 5

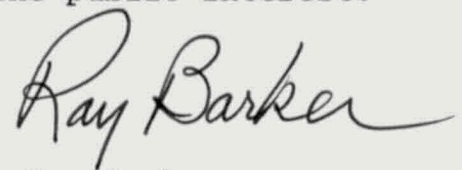
unfranchised areas in lieu of a blanket exclusion of all haulers from ever having any interest in any transfer station or other disposal facility. This would allow for a hauler who did not possess market power in any particular area from also being engaged in transfer station operations without adversely impacting the competitive nature of the hauling industry where the hauler did operate. This provision could be combined with a buy out clause identified in paragraph 1 that provided that if the hauler/transfer station operators market share increased beyond the maximum allowed Metro would either be required or have the option to purchase the transfer station for a sum certain.

In addition to the above recommendation, staff feels that as individual issues and concerns are raised through the process of developing an RFP for an exclusive franchise that it will be possible to devise sufficient standards and criteria for inclusion in the RFP and evaluation process to effectively safeguard Metro's concerns while at the same time allowing for competitive proposals to be submitted by at least two bona fide competitors and thus promote the public interest.

Yours very truly,



Daniel B. Cooper
General Counsel



Ray Barker
Council Analyst

DBC/RB/gl

Attachment

cc: Rena Cusma
Mike Ragsdale
Bob Martin



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
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COPY

October 4, 1988

Mr. Ray Barker, Council Analyst
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Mr. Barker:

Re: Transfer Station Procurement

The purpose of this letter is to respond to your request dated September 6, 1988, regarding the franchising of transfer station facilities.

I have reviewed the letter you attached to your request from Wastech and Riedel to the Portland City Council regarding their proposed intentions to seek franchises from Metro for the exclusive right to process and transfer all of the solid waste from the Metro east wasteshed.

In reviewing the Riedel and Wastech letters, I have also considered information that is independently available to me regarding the OPRC facility presently franchised by Wastech and the proposed Riedel compost facility which is the subject of the Memorandum of Understanding approved by the Metro Council.

The present provisions of the Metro Code governing solid waste disposal franchises (Metro Code Chapter 5.01) would in general allow Metro to grant the franchises sought by Wastech and Riedel. However, there are several provisions that may be inconsistent with the Riedel/Wastech proposal.

Section 5.01.080 of the Metro Code presently limits the term of a new or renewed franchise to the site longevity or five years whichever is less. Wastech/Riedel haven't stated a period for a franchise. Based on the cost of constructing such a facility, a franchise term longer than five years may be desirable. In order to grant a long-term franchise, an amendment to the Metro Code would be required.

Section 5.01.070(c) of the Metro Code does allow the Council to grant exclusive franchises. Five different factors are set forth for the Council to consider in determining whether an exclusive franchise should be granted. However, at this time, there are no Metro

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ordinances that would enable Metro to enforce the provisions of an exclusive franchise. That is, at this time, Metro has no mechanism to regulate or direct solid waste haulers to any particular facility. If an exclusive franchise were to be granted it would be desirable to provide for an enforcement mechanism.

Thirdly, the proposed letter from Wastech and Riedel refers to the Riedel composter. The MOU negotiated by Metro and Riedel contemplates the compost facility would not be operated pursuant to a franchise, but rather would be operated pursuant to an agreement between Metro and Riedel, authorized by ORS 268.600 to 268.690 (the statutory authority for the issuance of revenue bonds for financing District facilities). Further, the MOU contemplates that Metro would operate the gate of the composting facility. In general, the Metro franchise code contemplates franchisee's operating their own gates and setting their own rates subject to rate review by Metro. It is not clear from the Riedel/Wastech communication whether they intend to operate their transfer facilities as true franchisees with their own control of the gate or whether they would contemplate Metro operation of the gate with payment by Metro to Wastech/Riedel for their reasonable cost of operation. In the event Metro sought to issue a franchise with Metro controlling the gate, it would be necessary to amend the franchise code to so provide.

In response to your general question of what other legal problems might exist, I have reviewed the Metro franchise code and concluded that the provisions of the franchise code are not subject to the requirements of Metro Code Chapter 2.04 regarding public contracts, or ORS 279 relating to public contracting in general (the analysis supporting this conclusion is beyond the scope of this response). Thus, the Council might in its discretion, without engaging in any competitive process, grant an exclusive franchise for a particular area despite the fact that others sought such a franchise. While public policy considerations might suggest that a competitive process be followed, it would not be necessary to do so.

I understand that the Council Solid Waste Committee will be conducting a workshop on this issue at its meeting on October 4, I will be happy to be present to answer any and all questions that the Council Solid Waste Committee might have in this area.

Yours very truly,

Daniel B. Cooper
General Counsel

Agenda Item No. _____

Meeting Date _____

ORDINANCE NO. 88-260

DISCUSSION OF ISSUES PERTINENT TO THE DECISION
CONCERNING PUBLIC OR PRIVATE OWNERSHIP AND
OPERATION OF THE EASTSIDE TRANSFER
AND RECYCLING CENTER

Submitted to:
Benkendorf Associates

Metro Solid Waste Department

Submitted by:
ECO Northwest

**PLEASE BRING THIS
WITH YOU TO THE
9-20-88 SWC MEETING**

DRAFT

3 February 1988

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SUMMARY

1. The conclusion in the white paper of 25 January 1985 that Metro will take longer to find an acceptable site than the private sector is probably justified.
2. The empirical evidence strongly suggests that the introduction of competition into the delivery of municipal service will reduce costs.
3. While the professional literature shows a tendency for the private delivery of services to be less costly than public delivery, the correct institutional arrangement for any specific case is an empirical question requiring a cost estimation of the alternative delivery systems.
4. The recommendation by the Policy Committee that any bids be compared to the costs of a municipally-owned facility is a good one, consistent with recommendations in the professional literature.
5. Allowing the private sector to compete in any part of the siting, construction, ownership, and operation of the ETRC increases Metro's chances of finding an acceptable site and having a facility operating by 1990.
6. The final decision on privatization may not have to be made right now. Metro can ask for bids on any or all parts of the ETRC development, and then let its decision on privatization coincide with the decision about the most favorable bid: if it comes from a private firm, Metro will have made a decision to privatize.

- 7: By keeping itself as an active participant in the process of site selection and acquisition, Metro protects itself to some degree against the possibility of receiving no bids, of receiving unacceptable bids, or of having a selected bidder drop out of the process during the final stages of negotiation.

8. The question of public or private ownership has little to do with the issues of efficiency raised by public versus private operation. Any decision about ownership should be based on a financial evaluation of specific proposals. Public ownership may protect the public from a major service disruption in the event of default, but contracts or franchise agreements with private operators can require surrender of the facility and equipment if service is disrupted.

I. INTRODUCTION

A. BACKGROUND

Metro policy (resolution 84-506) states that it will own and operate three transfer stations in the Portland metropolitan area, including one in the city of Portland that should be operational by the time St. Johns Landfill closes in 1991. In the fall of 1987 Metro began its study of the Eastside Transfer and Recycling Center (ETRC). On 11 December 1987 the Solid Waste Planning Policy Committee (Policy Committee) reviewed the "Privatization White Paper" (3 December 1987) in which the Solid Waste Planning Technical Committee (Technical Committee) presented the findings of its Facilities Subcommittee and recommended the ETRC be privately owned and operated, a change from existing Metro policy. The Technical Committee included in its evaluation a review a previous Metro staff report (10 November 1983) and an analysis by Price Waterhouse (17 October 1980), concluding that the ETRC should be privately owned and operated for several reasons, the most important being quicker siting and lower cost.

The Policy Committee forwarded the recommendation for private ownership and operation made by the Technical Committee to the Metro Council Solid Waste Committee (the CSWC) but amended its reasons at a meeting on 8 January 1988: (1) the recommendation was based only on the expectation that the private sector could site the ETRC faster, and (2) the recommendation was conditioned on the development of an estimate of what a publically-owned transfer station would cost and on adequate public involvement.

On 12 January 1988 the CSWC returned the issue to the Policy and Technical Committees for further work, listing five questions it wanted addressed. The Technical Committee prepared its response to those questions in a report entitled "Eastside Transfer and Recycling Center White Paper," 25 January 1988.

B. PURPOSE OF THIS REPORT

On 28 January 1988 Metro asked ECO Northwest to assist with research related to its decision about whether to ask the private sector to site, own, and/or operate the ETRC. Metro staff requested a review of recent professional literature on the privatization of municipal services with the intent of providing: (1) a logical framework for discussing the relative merits of private and public siting, ownership, and operation, (2) the theoretical reasons for preferring private or public service delivery, and (3) any empirical evidence in support of the theories. This information is to supplement, not supplant, the analysis in the Technical Committee report of 25 January 1988.

Our analysis focuses on issues of cost and control. We do not comment at all on legal questions, and only briefly on financing.

C. METHOD

Our task was to review and summarize professional literature on privatization. Appendix B describes in more detail the method we used to conduct our literature search. The organization of this report reflects our method. We describe:

1. General arguments for public (government) or private (market) decision making
2. Methods for private delivery of services usually provided publically
3. Criteria for evaluating the relative advantages and disadvantages of these methods
4. How our findings apply to the pending decision about the ETRC.

To accommodate Metro's schedule, we produced this report in five working-days. We believe that we have reviewed several of the key works on privatization, but we know we have not reviewed them all. We hope that, nonetheless, the information we gathered and the way in which we present it helps the committees in their deliberations.

D. ORGANIZATION

At Metro's request our analysis starts broadly by developing the theory from which all discussion of privatization departs. Different readers may find this discussion (which occurs in Appendix A and Sections II and III) useful, overly simple, or needlessly boring. We do not begin an analysis of the advantages and disadvantages of contracting or franchising--the specific techniques proposed by Metro to effect privatization--until Section IV. Readers familiar or uninterested in the background information in Sections II and III can skip ahead to section IV without fear of missing points crucial to the application of our research to the ETRC in section V.

II. TYPES OF PRIVATIZATION

Appendix A discusses the economic theory that underlies the debate about public versus private delivery of municipal services. In summary, advocates of public delivery emphasize market failures (such as pollution and monopoly pricing) and argue that government can correct some of those failures and deliver services more efficiently and fairly. Such failures are caused by (1) a lack of incentive for private firms to supply collective goods (because of high initial cost, multiple and dispersed users, and the difficulty of excluding users once a service

is provided), (2) externalities (effects, like environmental pollution, that the private market will not include as a cost of production), (3) natural monopolies (some goods or services have decreasing costs over a wide range of output, which allows the first firm to enter the market to keep competitors out with pricing policies that are not socially optimal), and (4) an inability of the market to deal with issues of equity, redistribution, and other social goals.

Advocates of private delivery counter with some of the following points: (1) some of the previous points about market failure, while theoretically correct, are not significant in practice, (2) even if failures do exist, it is not clear that public delivery of services is either a necessary or sufficient condition for their correction--there are many reasons to believe that bureaucracies have grown too much and lack the proper incentives for finding efficient and fair solutions to problems of service delivery, (3) public delivery tends toward monopoly, high overhead, low maintenance, and stagnation; private delivery tends toward competition, cost cutting, cost-effective maintenance and replacement of assets, and flexibility, and (4) the efficiencies theoretically introduced by competition are observed empirically--many studies show private delivery to be more efficient.

As the reader will readily infer, the professional disagreement about public or private service delivery does not have an exclusively, or even primarily, empirical basis: it has an ideological one as well. The debaters differ in the emphasis they place on government versus markets, equity versus efficiency, social choice versus individual choice, bureaucrat versus businessman, the Brookings Institution versus the Heritage Foundation. On strictly with the ideological or normative grounds, there is no way to resolve the debate. Therefore, in the rest of this report we (1) identify specific criteria for evaluating the relative effectiveness of public and private delivery systems, and (2) review any empirical work that incorporates those criteria.

Our discussion of specific techniques for delivering municipal services will be easier to understand if we first discuss some broad

categories of techniques. An important contribution of the literature of privatization is that the disaggregation of the delivery of municipal services makes analysis easier. Table 1 shows that the provision of most municipal services consists of three general activities--planning, financing, and producing--which can be divided in many ways between the public and private sectors.

TABLE 1
SERVICE PROVISION ARRANGEMENTS

Activities Performed by the Public Sector			
Arrangements	Plan	Finance	Produce
Consolidated	x	x	x
Contract	x	x	
Regulated	x		
Grant			x
Market			

Source: Adapted from Kirlin, Ries, and Sonenblum, in Savas, E.S., editor, 1977. *Alternatives for delivering public services*, Boulder, CO: Westview. Page 114.

Kolderie (1986) makes a further distinction between the provision and the production of a service. For a government unit concerned with the delivery of municipal services, the decision about provision logically precedes the one about production. Provision requires decisions about policy making, requiring, regulating, contracting, franchising, financing, buying, and so on; production requires decisions about operating,

delivering, administering, selling, and so on. The two basic activities are distinct and may be done either publically or privately. Table 2 shows the potential combinations. The public sector may decide to have the private sector perform either the provision or production function, both, or neither.

TABLE 2
PUBLIC/PRIVATE ARRANGEMENTS FOR THE
PROVISION AND PRODUCTION OF MUNICIPAL SERVICES

PROVISION	PRODUCTION	
	Public	Private
Public	Pure Public	Contracting
Private	Govt. Vending	Market

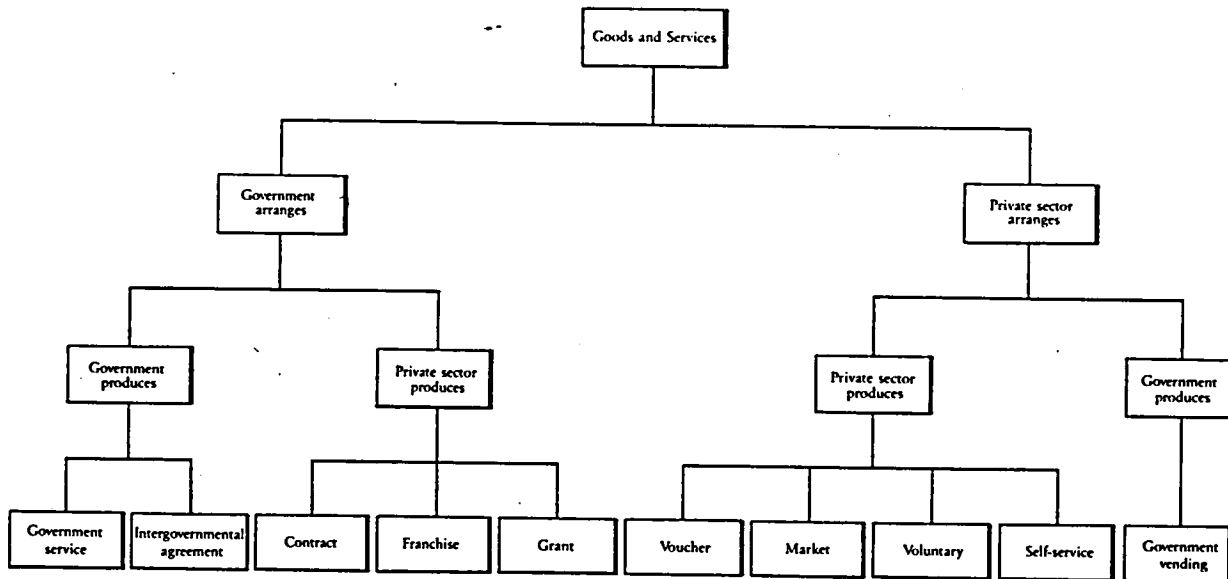
Source: Adapted from Kolderie, T., 1986. Two different concepts of privatization, *Public administration review*, July/August, page 285.

Tables 1 and 2 facilitate an understanding of the various options for privatization. Undoubtedly the two most-referenced authors on the topic of privatization are Savas (1977, 1982, 1987) and Butler (1985).¹ The discussion that follows comes primarily from the work of Savas, a proponent of privatization.

Figures 1 and 2 reproduce two useful diagrams Savas uses to illustrate different ways in which the public and private sectors can arrange for and produce municipal services.

¹ We were unable to secure Butler's book in time to include it in this review. From the number of references Savas makes to Butler's book (including his laudatory review of it in *Cato Journal*, 5, p. 663, 1985) we infer that Butler's main arguments are included in Savas's most recent work.

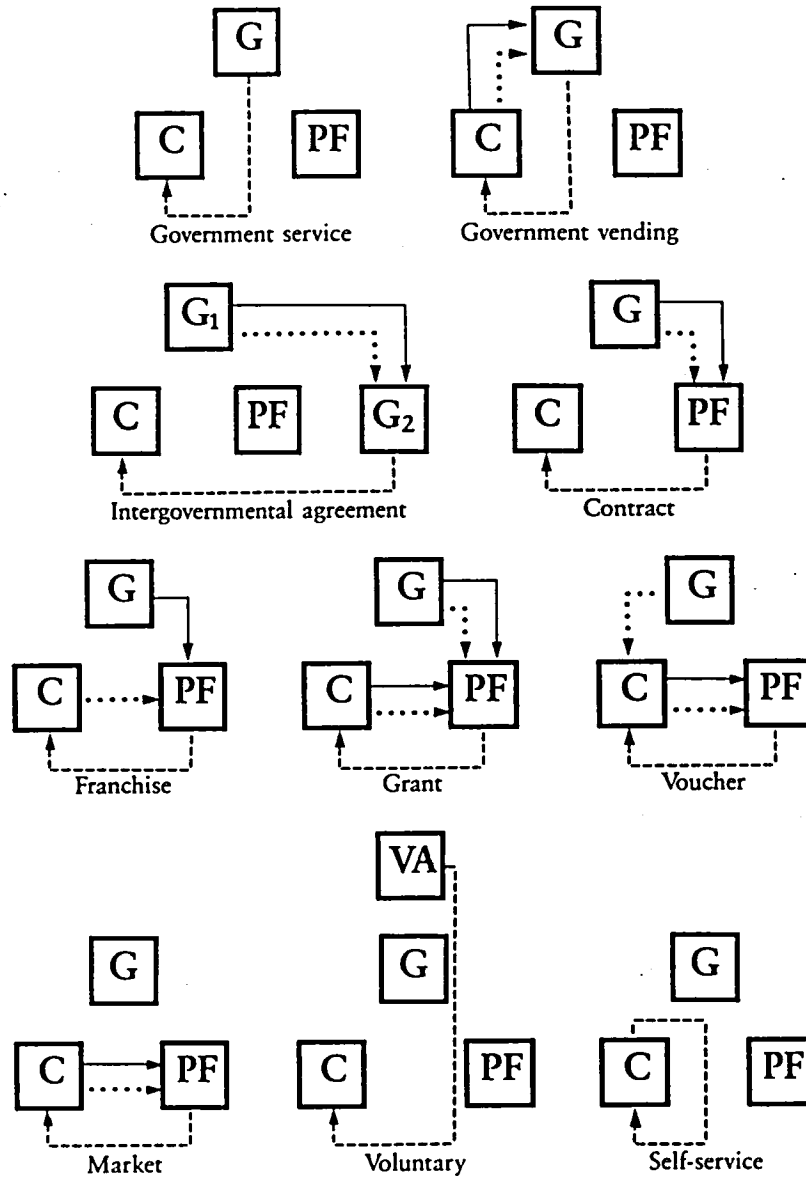
FIGURE 1
INSTITUTIONAL ARRANGEMENTS FOR DELIVERING SERVICES



OVERVIEW OF THE TEN INSTITUTIONAL ARRANGEMENTS FOR DELIVERING SERVICES

Source: Savas, E. S. 1987. *Privatization: the key to better government*. Chatham, New Jersey: Chatham. Page 63.

FIGURE 2
DETAILS OF THE INSTITUTIONAL ARRANGEMENTS



DIFFERENT SERVICE MODELS, SHOWING FLOW OF AUTHORIZATION
(SOLID LINE), PAYMENT (DOTTED LINE), AND SERVICE DELIVERY
(DASHED LINE) BETWEEN GOVERNMENT (G), VOLUNTARY ASSOCIATION
(VA), PRIVATE FIRM (PF), AND CONSUMER (C)

Source: Savas, E. S. 1987. *Privatization: the key to better government*. Chatham, New Jersey: Chatham. Page 91.

Hatry (1983), in his review of alternative approaches to service delivery, developed a slightly longer list of approaches than did Savas. Where Savas concentrates on institutional arrangements, Hatry adds to the list other approaches the public sector can use to improve services, reduce costs, or increase revenues: using marketing techniques or user fees to reduce the demand for services; increasing revenues through taxes, fees, and grants; increasing internal productivity through new technologies, methods, and organization; and reducing service levels.

While we believe the background we just provided is useful for gaining an overview of the issues being discussed by public administrators considering privatization, we do not mean to imply that the Technical and Policy Committees need be concerned with all these approaches to service delivery. For the ETRC, the Committees have already reduced the number of options for privatization that they choose to consider. To use the terminology developed in Savas and Hatry, the Committee wish to evaluate only two options:

1. **Government Service.** Metro sites, owns, and operates the transfer station
2. **Contracting/Franchising.** Metro contracts with or awards a franchise to a private firm (profit or nonprofit) for any combination of siting, constructing, operating, and owning the transfer station. The difference between a contract and a franchise is that under a contract Metro would pay the firm for the service from taxes or fees metro would collect, while under a franchise agreement users would directly (at the ETRC) or indirectly (through haulers) pay the firm for the service. As we will discuss later, for the purposes of our evaluation in this report, the differences between contracting and evaluation are unimportant (except that Metro's codes specify franchising)

It is on these options that we will focus our evaluation in sections IV and V of this memorandum.

III. CRITERIA FOR EVALUATING THE DESIRABILITY OF TYPES OF PRIVATIZATION

Some of the debate about privatization in Metro committee sessions has focused on the criteria by which public and private delivery systems should be evaluated. In this section we review the professional literature on this topic and suggest a simple list of five criteria for our evaluation in Sections IV and V.

For this type of evaluation, we frequently use three principal categories of evaluative criteria:

1. **Technical feasibility:** Does the technology exist to allow design standards to be met?
2. **Economic and financial feasibility**
 - a. **Efficiency:** Are the benefits of the program or policy greater than its costs? (All costs and benefits must be included in addressing this criterion, including the costs of any hazards or nuisances the program or policy may create.)
 - b. **Equity:** Are the benefits and costs of the program or policy fairly distributed?
 - c. **Financing:** Is the program or policy affordable?
3. **Political and administrative feasibility:** Can the program or policy get the necessary support from politicians, interest groups, citizens, and administrators?²

In the case of the ETRC, technical feasibility is not at issue: a transfer station uses proven technologies. The Committees' concern is to evaluate the institutional arrangements for delivering services: should

² For a complete discussion of these concepts and a full list of references see Patton, Carl V. and David S. Sawicki 1986. *Basic methods of policy analysis and planning*. Englewood Cliffs, N.J.: Prentice Hall. Pages 139-175.

it be public, private, or some combination. The criterion for political and administrative feasibility is often largely a function of economic feasibility: if the proposed program is demonstrably efficient and fair, it has a high probability of political support by a majority of interests. Thus, the criteria for making such an evaluation are primarily economic ones: what arrangement optimizes efficiency (low cost, both now and in the long run), expediency (getting the ETRC operational quickly), and equity?

Hatry (1983) also develops a list of criteria for evaluating the desirability of various approaches for delivering municipal services. Since we can do little to improve on Hatry's criteria or prose, we quote from it at length.

Individual communities should use criteria such as the following to select desirable approaches [to service delivery] and, subsequently to evaluate new approaches taken:

1. The cost of government service
2. The financial cost to citizens
3. The degree of choices available to service clients
4. The quality/effectiveness of the service
5. The potential distributional effects
6. The staying power and potential for service disruption
7. Its feasibility (that is, ease of implementation)
8. Overall impact

Cost of Governmental Service. Probably the predominant purpose of these alternatives is to reduce the cost of government services. Any approach should be assessed as to its potential for reducing the costs of governments and the potential size of that reduction. In this analysis, governments need to consider administrative costs associated with individual approaches, such as for monitoring contracts or finding and coordinating volunteers.

Financial Cost to Citizens. Closely related to the governmental cost is the resulting financial cost to citizens. Some arrangements, such as increased use of fees and charges and tax credits, permit some citizens to reduce their costs. But there may be added service costs to clients. For example, privatization of a service may lead to a monopoly, and the cost to clients may become higher than under government delivery. Switching to franchises can substantially reduce a government's costs but may have much smaller effects on costs to clients.

Choices Available to Citizens. A second purpose sometimes identified for alternatives is to provide more choices to citizens. Each approach and specific application should be assessed for its ability to provide citizens with improved choices of suppliers and service levels. This applies particularly to the use of nonexclusive franchises, vouchers, deregulation, use of fees and charges, and arrangements in which neighborhoods or individuals are given increased responsibility for service selection.

Quality and Effectiveness of the Service. Applications of these alternate approaches will likely have consequences for the quality and effectiveness of the service. These should be explicitly considered. A related concern, as the American Federation of State, County and Municipal Employees has fervently pointed out, is that private (for profit) sector delivery can lead to a greater amount of fraud and corruption. On the other hand, use of self-help and volunteers may encourage more community spirit and a greater sense of self-satisfaction. Private, for-profit firms may increase the quality of the service to meet competition.

Potential Distributional Effects. Distributional effects can result. Each approach should be assessed as to its potential for causing distributional problems and the need to compensate some groups. For each application, who gains? Who loses? Are some groups affected detrimentally (or beneficially) compared to others? If so, can (and should) they be compensated in some way? If some form of compensation is needed, this could cause added government costs. A major concern is whether low-income families are likely to be adversely affected, for example, if fees and charges are introduced.

Staying Power and Potential for Service Disruption. Approaches should be evaluated as to their staying power and potential for service disruption. Can the program be sustained? Will it last? How likely is it that sufficient competition will continue to avoid a contractor monopoly? Will volunteers continue to be available? Will private organizations be likely to continue service delivery, such as operation of a hospital? Service disruptions are more likely for some approaches than others. For example, strikes and bankruptcies by a private business can occur. Strikes or slowdowns by local government employees also occur but probably less frequently. A related question is the extent to which an approach is reversible. If it does not work or if the private agency withdraws, can the decision be reversed without sustained cost? If a government gets out of a service completely, including giving up all its facilities and equipment, the approach is, of course, very difficult. If part of the service is still performed by government workers or if some facilities and equipment are still owned by a government, reversal of the approach would be easier to achieve. Governments should consider the possibilities of disruptions when evaluating these approaches and may want to provide for such contingencies by retaining at least a small delivery capability.

Feasibility. Each approach and each application will have its own set of feasibility issues and ease of implementation. Such issues include the amount of time and effort needed to sell and implement the approach; the legal constraints; the need for modifications of existing state laws or local ordinances; the personnel questions; and the extent and nature of resistance by various interest groups in the community. Most of the approaches can have substantial political implications for elected officials. Inevitably, some community interest groups will oppose any particular action.

Overall Impact. This criteria summarizes the findings to date on the overall impact of an approach. (Hatry 1983: 10-12)

Valente (1984, 10) gives yet another list of criteria for evaluating institutional arrangements for service delivery. Savas (1987) provides a slightly different list for evaluating his ten institutional arrangements for the delivery of services. Table 3 reproduces his criteria and a summary of his evaluation (explained and documented in much more detail on pp 93-229 of his text).

TABLE 3
CHARACTERISTICS OF DIFFERNT ARRANGEMENTS

Characteristic	Government service	Government vending	Intergovernmental agreement	Contract	Franchise	Grant	Voucher	Market	Voluntary	Self-service
Handles poorly specified service	++						++	++	++	++
Requires multiple producers				++			++	++		
Promotes efficiency and effectiveness				++	+	+	++	++	+	
Achieves economies of scale			+	++	++	++	++	++	++	
Relates costs to benefits		+	+	++	+	++	++	++	++	++
Is reponsive to consumer		++			++	+	++	++	++	++
Is relatively invulnerable to fraud			++						++	++
Facilitates redistribution	++		++	++		++	++		+	
Furthers other purposes	++		+	+	+	+	+	+		
Limits number of government employees				++	++	++	++	++	++	++

Source: Savas, E. S. 1987. *Privatization: the key to better government*. Chatham, New Jersey: Chatham. Page 108.

We present Table 3 primarily to illustrate the criteria, not the evaluation of criteria. We will discuss the evaluation of government service, contracting, and franchising in the next section.

Based on our review of the literature and our understanding of the issues relevant to Metro's decision about ownership and operation of the ETRC, we propose the following list of criteria for our analysis of contracting and franchising:

1. Cost
2. Quality and level of service
3. Potential for service disruption
4. Timing: how quickly can siting be completed?
5. Political feasibility

We have eliminated some criteria not because we think they are unimportant, but because we do not believe differences in public or private siting, ownership, or operation will be different when evaluated on those criteria. For example, we see no reason to believe that the choices available to citizens or the distribution of impacts will be significantly different under public or private arrangements for service delivery: either arrangement will include the same type of structure, the same fees based on use, and the same environmental regulations.

IV. EVALUATION OF CONTRACTING/FRANCHISING

A. INTRODUCTION

The institutional options for private ownership or operation of the ETRC defined by the Technical and Policy Committees reduce to either contracting or franchising. As we discuss later, Metro's codes may, in fact, limit it to franchising. Nonetheless, we reviewed studies of both contracting and franchising because (1) there are many more cost studies of contracting than franchising, and (2) in almost all respects

franchising is (or can be made) identical to contracting: the only unalterable difference is in whether a public agency collects fees or taxes (contract) or a private firm collects fees from users (franchise). In either case the essential relationship between the agency and the private firm is the same: the agency can (1) require firms to compete through bids, (2) enter into legally binding agreements that specify performance, charges, escalation factors, incentives, and penalties. Thus, while much of the empirical work on costs comes from studies of contracting, we think it can be generally applied to franchising.

The evidence that we review in the next section illustrates that, for a wide variety of services, contracting or franchising can reduce costs. Unfortunately, we found almost no specific information about waste disposal or transfer facilities. We did find, however, that many jurisdictions do use contracts and franchising for waste disposal. A 1982 survey of about 1800 local governments conducted by the International City Managers Association (Valente 1984) reported that 35% of them contracted or franchised solid waste disposal. A conservative conclusion from the data is that some jurisdictions find privatization preferable to municipal delivery.

That conclusion is obviously not a very strong one. As we note below, though theory and case studies suggest the conditions under which privatization is likely to decrease costs, one cannot conclude unequivocally that costs will be less for any specific situation: one must conduct a real analysis of costs.

B. REVIEW OF THE EVIDENCE ON CONTRACTING/FRANCHISING

In this section we summarize the empirical evidence we reviewed comparing contracting/franchising to municipal service delivery. We focus on five criteria for our evaluation: cost, quality and level of service, potential service disruption, timing, and political acceptability.

1. Cost

Of the criteria we listed for evaluating privatization options, cost-effectiveness has received the most attention in the professional literature and in the press. There exists strong evidence that in many cases private enterprises can provide services at significantly lower cost than public agencies.

As we noted previously, many of the reasons for expecting better efficiency from the private sector are ideological rather than empirical. Nonetheless, we think they are worth stating. Much of the theoretical foundation for expectations of greater cost-effectiveness in the private sector comes from the field of management science rather than from economics. Managers are human, and humans respond to incentives. In the private sector, a manager who consistently exceeds his budget often loses either his management responsibilities or his employment. The professional literature that attacks bureaucracies argues that managers who exceed budgets are often rewarded with larger budgets and staffs the next year. Larger budgets and larger staffs mean more power and higher pay for the manager. Civil service contracts can make it difficult to remove unproductive employees and usually require that wages and benefits increase with length-of-service, independent of performance. Other, perhaps stronger, incentives in the private sector stem from the necessity to perform at least as well as the competition or cede business to them. The only similar pressure on public enterprise is the threat of privatization.

In theory, incentives resulting from competition make the private sector efficient. Private enterprises can, in many cases, produce the same goods or services as public agencies and making an acceptable return on their investment while charging less than a public agency that makes no profit. There is no reason, though, why a public agency, given proper incentives could not produce at an equal or even lower cost (because, in part, a public agency can obtain capital at lower--it does not have to pay bondholders as much as private firm have to pay bond- or stockholders). The mere threat of privatization

may be sufficient incentive for public agencies to increase efficiency. In Phoenix, city agencies bid along with private contractors for selected city contracts. Hatry (1983, 22) reports that of 22 contracts let recently, city agencies have won 10.

Generalities about management incentives have more meaning in some cases than in others. One can find examples of both superb and poor management in either the private or public sector. Privatization is most likely to be tried in cases where public enterprise has serious problems. The more to be gained from privatizing, the more pressure there is to privatize. The first cases of privatization should show strong evidence of improved cost-effectiveness. As privatization becomes more popular, others, encouraged by the early successes, will try it even though they may have less potential for gain. We expect that, over time, studies will show less and less average improvement from privatizing. An Urban Institute study reported in Hatry (1983, 25) found that a change in either direction resulted in savings. Hatry suggests that a major change will only occur if the potential for savings are great, whether the change is to or from privatization.

The real issue in this debate is whether the public sector has incentives to perform as efficiently as the private sector. When one considers that many public agencies are staffed with hard-working, able employees who are paid less than they might get in the private sector, and that some private firms, especially those that are large or in regulated industries, suffer the from same problems of bureaucratic inefficiency and empire building thought to be characteristic of public agencies, it is clear that one must move to a look at actual cost comparisons to decide the issue.

A number of studies have been conducted on public and private residential refuse collection. Savas (1987, 126-7) presents a compilation of their results. The most comprehensive, by Savas and Stevens (1975), analyzed 315 cities larger than 50,000 in population and found that the cost of municipal collection is from 29% to 37% higher than the price

of contract collection and that there is no difference in effectiveness.³ Cost savings from contracting out collection range from 14% to 50% in the other studies. The most rigorous (Stevens 1984) found municipal collection between 28-42% higher than contracting after controlling for quantity, frequency and location of pickup, route density, and quality of service.

The operation of a wastewater treatment plant may be more like transfer station operation than residential collection is: it is a large capital facility with a long life operated by relatively few employees. Poughkeepsie, New York, contracted for operation of its treatment plant. It estimates that it saves about \$250,000 a year, or 25% of what it cost the city to operate it. A detailed analysis by Hanke (in Kent 1987, 187) reported private operating costs 25% lower than operating costs for comparable public water systems, and private investment costs 20% to 50% lower.

While the evidence is not definitive for the case of the ETRC, we can conclude that it amply demonstrates the *potential* for privatization to reduce the cost of service production under a wide variety of conditions. Absent other case-specific information, the weight of evidence on cost is on the side of privatization. But the committees should heed Valente (1984) who urges that all studies of contracting/franchising include a "do or buy" study comparing municipal and private costs, and who cautions that "because efficiency varies in local government and by service within each government, the only way to determine whether contracting is more efficient [than municipal delivery] is to undertake a thorough cost comparison."

³ They also found that in contrast to where collection was contracted out to competitive bidders, cities where collection was entirely private with households dealing directly with franchise holders had costs higher than municipal collection. Hatry (1983, 32) suggests that these differences are a function of restriction of entry (which may occur over the long-run, reducing competition and limiting a local government's ability to determine fair price). Hatry believes these costs can be reduced if many firms compete for franchises. As we have stated elsewhere, it depends on how well the local government negotiates its agreements with franchisees.

2. Quality and Level of Service

Many of the same conditions that lead to stronger incentives for private enterprise to achieve cost-effectiveness result in stronger incentives for public enterprise to provide higher quality and levels of service. Private firms must produce goods or services of sufficient quality to be attractive to their customers. They will produce as much output as their customers are willing to pay for. Public agencies often have the freedom to produce more quantity or quality than consumers would be willing to pay for if they had a choice. Managers of public agencies see it as their duty to produce as much of the highest quality service as possible. From their viewpoint, their service is essential and the more of it provided to the public, the better off the public will be. The public, however, may, after consuming some quantity of that service, value some other good or service that could be produced with the same resources more highly.

The quality issue has received much less study than cost. Examples can be found that point out the importance of paying attention to quality concerns when devising privatization schemes. If quality and level of service can be measured objectively, minimum standards should be specified in contracts or franchise agreements.

The contract for the Poughkeepsie treatment plant mentioned earlier specified standards for various effluent characteristics. Tulsa, Oklahoma's contracts for garbage collection specify financial penalties if complaints are not resolved within 24 hours, if containers are not returned to their original locations, if lids are not replaced, or if haulers do not pick up spilled trash. It also allows the city to take possession of all the contractor's equipment and facilities if the contractor fails to provide service for more than five consecutive working days. A study of refuse collection (Stevens 1984) found no significant difference in the quality of service offered by municipalities and contractors.

We found no strong evidence to differentiate between public and private delivery on the criterion of quality of service.

3. Potential Service Disruption

The issue of potential service disruption requires serious consideration when considering the privatization of essential public services like fire protection and solid waste management. Both public and private producers face the possibility of unforeseen events affecting their ability to continue the service. Private firms seem more likely to suffer financial difficulties or labor troubles than public. Public agencies often have legal options for coping with these events that private firms under contract or franchise agreement do not have. However, when the alternative is disruption of service, contracts can be renegotiated.

The availability of alternative producers determines the importance of a private producer's staying power. In cases where only one producer exists at a time in the area, replacing that producer will be much more expensive and disruptive than if another is available to step in. The ability to appropriate a failing producer's equipment and facilities can mitigate some of this danger. Thus, to a large extent an agency's concerns about service disruption can be addressed in a contracting or franchising agreement.

Though all works on evaluating the tradeoffs between public and private delivery of services mention that the issue of service disruption should be considered, we found no empirical evidence on the extent to which privatization increased the chances of such disruption.

4. Timing

A chief concern Metro has about the ETRC is that it must be operating by 1990. Thus, the speed with which Metro can site and

construct the ETRC must be compared to the speed with which the private sector might do it. If it were the case that only a private enterprise could site a facility within the time-frame required, then timing would be a hurdle that public enterprise couldn't clear. In that case, there would be no choice but to privatize.

Some of the theoretical reasons for expecting the private sector to proceed more rapidly with siting are identical to those for expecting it to provide service at a lower cost: it has market incentives to produce efficiently, and less internal regulation and inertia to keep it from doing so.

We found no solid empirical evidence about the speed of siting facilities in the private and public sectors. On the one hand, since either sector would ultimately have to go through the same siting regulations, speed may be more a function of the prevailing siting laws. For example, an site proposed for the ETRC, whether identified by Metro or the private sector, will have to go through Metro's siting and citizen involvement process.

On the other hand, Oregon does have examples of fast siting by the private sector (the metropolitan convention center, a Sheridan correctional facility, both sited in a few months) to contrast to Metro's unhappy experience with solid waste facilities (much of which may be attributable to the type of facility). Getting the private sector involved with siting has two clear advantages. First, rather than sites being selected first on hypothetical, technical criteria, they are selected based on availability: a proposed site is an available site. Second, getting the private sector involved in siting does, if nothing else, increase the number of people looking for a site for the ETRC.

In our research we did encounter a firm that specialized in siting landfills and then turning over a site, a permit, and public approval to a private firm or agency for the development of a landfill (Robert Glebs, RMT, Madison, WI, (608) 255-3133). We do not know whether such firms exist in the Portland area.

5. Political Feasibility

Perhaps the best way to view political feasibility is not as an evaluative criterion but as a final hurdle for a privatization scheme that satisfies all of the other criteria. Feasibility is unlikely to be an issue when considering continued public provision and production. But there is often strong opposition from public employee unions and client groups to any privatization scheme. In some cases, public employee unions have threatened to strike all of a state or local government if any part becomes privatized.

In another case, Rochester, New York was about to contract out waste collection for one part of the city. The day before the contract was to be signed, the public employees' union offered to reduce crew sizes, allowing the city to do it less expensively than the contractor. In Rochester, the union's response to the threat of privatization rendered the proposed approach infeasible, but at the same time allowed satisfaction of the other criteria.

It does not appear to us that these issues will be important in the case of ETRC. On the contrary, the committees (including the Policy Committee) tend to support privatization.

V. APPLICATION OF THEORY AND EMPIRICAL FINDINGS TO THE ETRC

A. DISCUSSION OF METRO ANALYSES OF PRIVATIZATION

We begin by revisiting some of the ground Metro's staff and committees have covered in the last few years. We evaluate their conclusions in light of the information we have presented in this report.

The staff report of 20 December 1983 is a well-reasoned analysis of the issues facing Metro at the time. The staff report correctly notes that since a transfer facility will be built through a competitive bid process, the issue of privatization reduces to one of ownership and operation. Its conclusions about the advantages of contracting over franchising, however, seemed to be based on a narrower definition of franchising than we encountered in the professional literature, implying that franchising required a longer-term commitment than contracting and required Metro to regulate profit rather than negotiate a fee. The literature suggests that franchise agreements may be identical to contracts in all respects, except in who collects payment from users. We agree with the conclusion that Metro will have to commit to a long-term agreement to induce firms to bid on ownership of the facility, but in theory that agreement could take the form of a contract or a franchise. In practice, however, it appears that Metro Code Section 5.01.030(a) commits it to franchising.

The Price Waterhouse report of 17 October 1980 also provides a useful analysis of the issues facing Metro at the time, concluding that "...the primary advantage of Metro ownership is maximum control over the solid waste disposal system with the main disadvantage being the requirement for commitment of public capital." The 25 January 1988 white paper explains why many of the concerns the Price Waterhouse report expressed about Metro's authority to give control of a transfer station to the private sector have now been resolved. Most of the report's concerns about private ownership are hypothetical rather than empirical. Much of the empirical work done since 1980 presents evidence which, if not counter to these hypothetical concerns, at least makes it clear that there are many examples of privatization in which the theoretical problems have not arisen.

The "Privatization White Paper" of 3 December 1988 has some of the same strengths and weaknesses of the Price Waterhouse report. It gives a list of potential advantages and disadvantages of privatization, but makes no reference to any empirical work. Though the articles in

the professional literature agree on few things, the best agree that privatization must be evaluated empirically. This white paper improved markedly the draft rationale developed in November 1987 by the Facilities Subcommittee, which implied that Metro was incapable of siting an attractive, functional transfer station, CTRC notwithstanding.

B. CONCLUSIONS

From our analysis of the professional literature and Metro's reports, we feel confident about the following:

1. Metro's committee's want to consider three arrangements for the siting, ownership, and operation of the ETRC:
 - a. Ownership and operation by Metro
 - b. Ownership by Metro with operation by a private firm under franchise to Metro
 - c. Ownership and operation by a private firm under franchise to Metro
2. There is no necessary reason that a franchise contemplated by Metro cannot offer all the same advantages of contracting, provided Metro carefully negotiates the conditions of its franchise agreement.

3. The conclusion in the white paper of 25 January 1985 that Metro will take longer to find an acceptable site than the public sector is probably justified. Though we could find no necessary reason to conclude that Metro would have to find a "best" site while the private sector could just find a "working" site (ultimately, any site will have to meet Metro's performance standards and pass through the same public participation process), it is likely that it will take Metro longer to develop a list of alternative sites if it does all work in house than if it accepts candidate sites from the private sector. Evidence from other municipalities does not exist and would not be useful if it did. Metro must deal with a Portland/Oregon siting problem; we defer to the assembled wisdom of its committees on this issue.
4. The empirical evidence strongly suggests that the introduction of competition into the delivery of municipal service will reduce costs.
5. While the professional literature shows a tendency for the private delivery of services to be less costly than public delivery, the correct institutional arrangement for any specific case is an empirical question requiring a cost estimation of the alternative delivery systems.

The previous points are more or less documented by the evidence we reviewed. The following conclusions are slightly more tentative since they result from our interpretation of the evidence on privatization and the conditions imposed by the Policy Committee:

1. The recommendation by the Policy Committee that any bids be compared to the costs of a municipally-owned facility is a good one. That recommendation is consistent with assumptions "4" and "5" above, providing both competition and direct cost comparisons for public and private options. It is also consistent with the process being used to site a

regional landfill, which compares the costs of the public option (Bacona Road) to the costs of the private one (Arlington). While Metro does not yet know how well that process will work, we believe that the cost estimates for Bacona Road will help negotiate a more favorable contract for Arlington if the Metro Council decides on that option.

2. Allowing the private sector to compete on the siting, construction, ownership, and operation of the ETRC increases Metro's chances of having a facility operating by 1990. The reports of the various Metro committees make it clear that time is the most important evaluative criteria: Metro needs a site soon. In a very real sense, putting the ETRC to bid increases the staff at Metro's disposal to look for that site. If private firms are interested in bidding, their staff and the consultants they hire will supplement parallel efforts of Metro. Metro should keep in mind that it can allow the private sector to enter any or all of the four elements of ETRC development: siting, construction, ownership, and operation.
3. The final decision on privatization may not have to be made right now. For the purposes of getting bids it may be sufficient for Metro to state that its commitment is to open the ETRC by 1990 on the most favorable terms available to residents of the Metro region. It may even go farther and say that it expects that the private sector will be able to respond quicker than a public agency. The decision, however, about whether to privatize would coincide with the decision about the most favorable bid: if it comes from a private firm, Metro will have made a decision to privatize.
4. By keeping itself as an active participant in the process of site selection and acquisition, Metro protects itself to some degree against the possibility of receiving no bids, of receiving unacceptable bids, or of having a selected bidder

drop out of the process during the final stages of negotiation. Since quick siting is so important, it would be imprudent for Metro to delay any action for several months while it waits and hopes for acceptable bids to be developed.

5. We found nothing in the literature on which to base a decision about the ownership of the ETRC. A wide variety of schemes have been tried by other jurisdictions with success, including complicated lease-back deals. The question of public or private ownership has little to do with the issues of efficiency raised by public versus private operation. The criteria for deciding between public and private ownership are primarily financial. Any decision about ownership should be based on a financial evaluation of specific proposals. Public ownership may protect the public from a major service disruption in the event of default, but contracts or franchise agreements with private operators can require surrender of the facility and equipment if service is disrupted.

APPENDIX A

PUBLIC OR PRIVATE? AN OVERVIEW OF THE ARGUMENTS

Underlying the questions about the ownership and operation of the ETRC are much older ones about the proper scope of government in a democratic society. Moore (1978) summarizes much of what is relevant from that debate for planners concerned with the extent to which public policies and planning should supplant market decisions. A finding that government intervention in the market can correct market failures that are important to society is a necessary but not sufficient condition for considering public ownership or operation. The economic theory of market failures is clear: they lead to the production of some quantity of a good other than the quantity that maximizes overall social welfare. The most important of these market failures for the case we are addressing in this report are:

1. **Nonappropriability: externalities and public goods.** In an ideal market, private property rights and a free market link the right to take action to the rewards and responsibilities for that action. Benefits and costs of action are appropriable. But when the production or consumption of a good imposes costs on persons other than the producer or consumers, and when those who bear the external costs are not compensated by the parties to the transaction, more than the socially optimal quantity of the good will be produced and wealth will be transferred away from those who must bear the costs. The most clear and often cited example of such "externalities" is the environmental pollution and nuisance that may accompany development. For example, a transfer station may cause costs to local residents in terms of congestion, litter, and noise. Without government intervention (regulation) private firms may have little incentive to reduce these problems. When the production or consumption of a good produces benefits for

persons not involved in the transaction, and there is no way to limit benefits to "free riders," less that the socially optimal amount will be produced and wealth will be transferred from those who pay their fair share to the free riders. Fire protection and national defense are examples of these goods, called public goods.

2. Large numbers. The problems posed by nonappropriability might be solved by voluntary contractual arrangements if the number of entities whose agreement is required to eliminate an inefficiency is small. Then each entity can see the collective benefit of group action and that other entities make a fair contribution to the solution. But for large groups, like cities, those conditions do not apply: some type of representative organization is required to take collective action and enforce collective decisions.
3. Natural monopolies. The existence of economies of scale (decreasing per-unit cost with increasing output) over the relevant range of production means that a single firm can provide all the output at a lower average cost than any combination of firms. That one firm can thus fend off any potential competition by threatening to lower its prices below the costs of potential competitors while actually keeping them far above "competitive" levels. At these higher prices, less than the socially optimal quantity will be produced and wealth will be transferred from purchasers of the good in question to the owners of the one producing firm. Local telephone and residential electric service are examples of natural monopolies: without government intervention, they lack incentives to charge a socially optimal price.
4. Inadequate information. If one or both parties to a transaction lacks adequate information about the nature of the product or its market value, the agreed-upon price likely will differ from the fair market price.

By intervening in a market characterized by any of the above conditions, a public agency *may*, if it chooses the right method of intervening, increase the welfare of society as a whole. But while most mainline urban economists (e.g., Mills 1984) recognize the necessity of government intervention, they suggest using it sparingly, only to address real market failures that intervention can improve.¹ Starting with Tiebout (1954) urban political and economic theorists developed the theory of public choice, arguing that many services are better provided by a multitude of small jurisdictions, each responsible to its constituents, than by big government. They hypothesized that citizens would "vote with their feet," choosing as a residential location that jurisdiction which best met their preferences for public services, and that small jurisdictions would have market-like incentives and capabilities to compete for those citizens. These ideas fit naturally with those of privatization, which took market incentives a step farther.

Proponents of government action point to several necessary and successful interventions. Inadequate information may be remedied by simply publishing and distributing accurate information. Natural monopolies often require nothing more than the limiting of prices that producers are allowed to charge (as the Oregon Public Utility Commission does). Requiring producers to clean up their pollution can result in their prices better reflecting the true social cost of producing the good. By levying taxes, governments can pay for public goods that would not be produced in sufficient quantity otherwise.

But note that none of these solutions *requires* public ownership or operation, though public ownership or operation may be a solution. Different governments choose different combinations of ownership and operation to suit particular circumstances and political styles. Even

¹ We have greatly oversimplified the debate in the professional literature. See, for example, any intermediate text on welfare (micro) economics for the theory of market failure and government, and Waters (in Kent 1987) for a critique of the theory.

national defense has been contracted out by some nations. The evidence is clear that within the United States there is at least one example of every type of institutional arrangement for every type of municipal service.

Central to the public/private debate is the issue of competition. Proponents of privatization argue that public agencies have monopoly power and that bureaucrats have perverse incentives to build empires--since they cannot share profits, they seek the perquisites that attend the management of large agencies and budgets (Niskanen 1968). Most of the criteria the Technical Committee developed to evaluate the issue of public or private ownership incorporates some variation of the statement that competition reduces costs. Even many of the proponents of public provision acknowledge the necessity of introducing some market incentives into bureaucracies to improve performance.

As we discuss in Section II of the report, distinguishing between the provision and production of municipal services clarifies the issues of the debate. Even strong proponents of privatization accept acknowledge that government may have a legitimate and useful role in the provision of services; i.e., it will need to oversee the production of services to reduce the types of market failures listed above. But the assumption of provision does not imply the necessity of production: proponents of privatization argue that the costs of production of many municipal services can be reduced by transferring them from the public to the private sector.

Economic theory provides no unequivocal answer to what are essentially empirical questions about costs. Nor can it answer unambiguously questions about the proper combination of ownership and operation for Metro's transfer stations. It does, however, offer a framework for organizing empirical evidence about other public services in other areas, and for evaluating the desirability of various alternatives.

7.1 Consideration of Ordinance No. 88-258, for the Purpose of Amending Ordinance No. 88-247, Revising the FY 1988-89 Budget and Appropriations Schedule for Implementation of the Collective Bargaining Agreement, Incorporation of Pay and Class Study Appeals and Amending the Level of Appropriations
(First Reading)

The Clerk read the ordinance a first time by title only. The Presiding Officer referred the ordinance to the Finance Committee for a public hearing and recommendation. The hearing was scheduled for August 18, 1988.

7.2 Consideration of Ordinance No. 88-260, for the Purpose of Amending Metro Code Section 5.01, Disposal Site Franchising, to Set Requirements for a Transfer Station Franchise
(First Reading)

The Clerk read the ordinance a first time by title only. Presiding Officer Ragsdale referred the ordinance to the Solid Waste Committee for a public hearing and recommendation. The hearing was scheduled for August 2, 1988.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 88-835C, for the Purpose of Adopting a Policy to Establish that the Metro East Transfer & Recycling Center(s) may be Publicly or Privately Owned and that Potential Vendors Obtain Land Use Permits for Proposed Transfer Station Sites

Councilor Hansen, Chair of the Council Solid Waste Committee, summarized his written report on the Committee's recommendation that the Council adopt the resolution.

Main Motion: Councilor Hansen moved, seconded by Councilor Kirkpatrick, to adopt Resolution No. 88-835C.

Councilor Van Bergen asked if the resolution had been reviewed by counsel. The Councilor was concerned about tax issues. Dan Cooper, General Counsel, said he had reviewed the resolution and was satisfied no tax problems would result by its adoption.

Motion to Amend: Councilor Waker moved, seconded by Councilor DeJardin for discussion purposes, to delete the "be it resolved" paragraph 1(g) which would delete the criteria of avoidance of vertical integration (monopoly) of the solid waste business.

Councilors discussed the amendment. Councilor Van Bergen said he was concerned the same company managing the Gilliam County Landfill

not be allowed to manage other, major components of the solid waste system.

Vote on the Motion to Amend: A vote resulted in:

Ayes: Councilors DeJardin, Knowles and Waker

Nays: Councilors Collier, Cooper, Hansen, Kelley, Kirkpatrick, Van Bergen and Ragsdale

Absent: Councilors Coleman and Gardner

The motion failed to carry.

Responding to Councilor Knowles' questions, Rich Owings, Solid Waste Director, reported the Council would probably consider a separate resolution approving a request for bids for the transportation to landfill project on August 25. Councilor Knowles said he was very concerned that as the project took more time, transfer station options were narrowing down. He wanted to see staff progress as quickly as possible to protect options and increase competition among vendors.

Presiding Officer Ragsdale asked how the criteria for appropriate mitigation and enhancement for the host community would be developed. Mr. Owings said staff would propose criteria for Council consideration.

Councilor Van Bergen noted the first "be it resolved" paragraph of the resolution stated the project could be publicly or privately owned and was concerned that most of staff's work seemed to assume the transfer station would be privately owned. He asked if staff had abandoned efforts to pursue a publicly-owned option.

Mr. Owings responded that letters had recently been sent to real estate brokers asking them to propose sites suitable for municipal ownership. The brokers had been advised of Metro's criteria and time line, he said. Councilor Collier and Van Bergen asked that letters be sent to the brokers giving them a specific deadline by which proposals should be submitted.

Councilors Kirkpatrick and Kelley said the Solid Waste Committee had consistently pushed staff to prepare a publicly owned transfer station option which the Council could compare with a privately owned option. They were concerned staff had not followed through with that request. Councilor Knowles added that until determined otherwise by the Council, the current agency policy was to develop a system of privately owned transfer stations.