

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 16-1390, FOR THE PURPOSE OF APPROVING A SOLID WASTE FACILITY FRANCHISE APPLICATION AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW FRANCHISE TO GSS TRANSFER, LLC. TO OPERATE A TRANSFER STATION

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503-797-1836

EXECUTIVE SUMMARY

Adoption of Ordinance No. 16-1390 will authorize the Chief Operating Officer (COO) to issue a new solid waste facility franchise for GSS Transfer, LLC to operate a new transfer station at its existing solid waste reload site located in the city of Gresham.

This proposed ordinance is consistent with Metro's transfer system configuration policy because it promotes efficient off-route travel and supports a small, locally-based business that is part of the region's solid waste system.¹ In addition to this action for GSS Transfer, the Metro Council will consider four other ordinances to renew current franchises for Forest Grove Transfer Station (Ord. No. 16-1381), Pride Recycling Company (Ord. No. 16-1384), Willamette Resources, Inc. (Ord. No. 16-1383), and Troutdale Transfer Station (Ord. No. 16-1382) at its meeting on December 1, 2016. Coordinating these franchise decisions ensures a clear and uniform approach to allocating tonnage and establishing consistent operating requirements for all of the privately-owned transfer stations in the region. Staff will develop an administrative rule to further implement the configuration policy and future tonnage allocations for consideration by Metro Council during 2017.

BACKGROUND

Overview

Metro's major solid waste contracts (operations,² transport, and disposal) will expire at the end of 2019. In an effort to shape the future solid waste system to better attain public benefits and improved sustainability, Metro has undertaken a major planning effort (known as the Solid Waste Roadmap) to set the future direction of the region's solid waste system for the next several years. A major component of this effort is to take a broad look at the role, configuration, and services offered by publicly and privately-owned transfer stations.

On July 21, 2016, the Metro Council adopted a transfer system configuration policy.³ The primary purposes of the policy are to: 1) ensure that the region's transfer system provides

¹ Adopted by Metro Council on July 21, 2016 via Resolution No. 16-4716

² Metro's transfer station operations contracts expire in March 2017, but can be extended until the end of 2019.

³ Resolution No. 16-4716

maximum public benefit, 2) maintain the current configuration of publicly and privately-owned transfer stations, 3) ensure that an adequate amount of putrescible waste flows to publicly-owned stations (at least 40 percent of the region’s putrescible tons), 4) limit the amount of putrescible waste that any one company may accept for transfer within the region (no more than 40 percent), and 5) improve rate transparency. The configuration policy also seeks to promote efficient off-route transport of waste to reduce greenhouse gas and provide opportunities for small, locally-based businesses to participate in the region’s solid waste system.

In addition to the above, the configuration policy shifts Metro away from its current “tonnage cap” system, in which the Metro Council establishes annual facility tonnage limits, to a new “tonnage allocation” system in which tonnage authority is proportionally allocated to privately-owned stations each year. Further details of the 2017 allocation methodology are described below.

Applicant Information

The applicant, GSS Transfer, is a partner company of Gresham Sanitary Service, Inc. - a local, family-owned waste collection business established in 1948. Since 1992, Gresham Sanitary has operated an “exempt” solid waste reload facility at its base of operations located at 2131 NW Birdsdale Avenue in Gresham. Specifically, Gresham Sanitary currently collects putrescible waste from

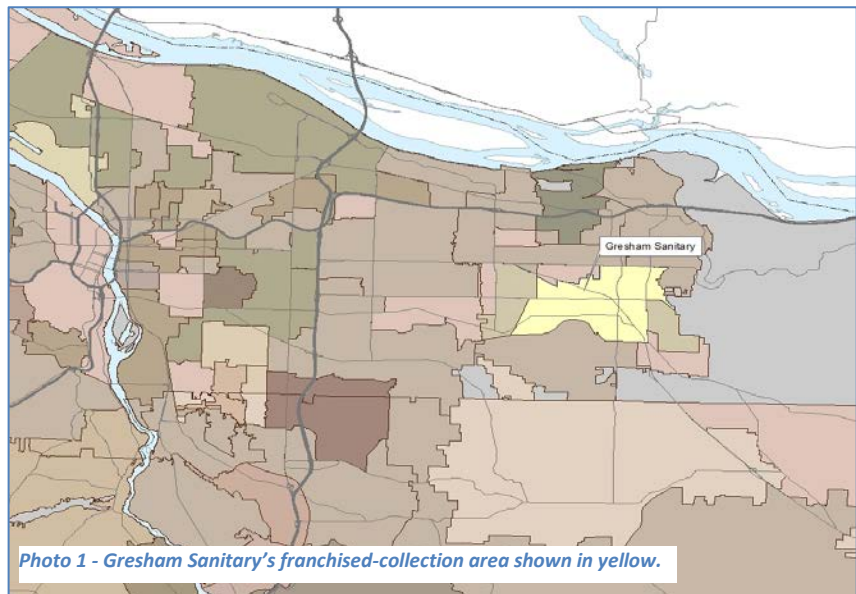


Photo 1 - Gresham Sanitary's franchised-collection area shown in yellow.

residential and commercial customers within a geographically-contiguous area within the city of Gresham. The waste is then consolidated at its facility and transported to another transfer station within the region where it is unloaded, reloaded, and transported to a landfill for disposal. Under current Metro Code, a facility that accepts putrescible waste exclusively from its own hauling activities within a contiguous franchised-collection area and transports that waste to a transfer station is exempted from the requirement to obtain a Metro license or franchise.⁴ Although Gresham Sanitary is currently exempt from Metro’s licensing and franchising requirements, the facility currently holds a solid waste transfer station permit issued by the Oregon Department of Environmental Quality (DEQ).⁵

⁴ Metro Code Section 5.01.040(a)(7) (Exemptions)

⁵ Solid Waste Disposal Site Permit No. 1392 issued on July 15, 2009

Currently, Gresham Sanitary collects waste from its routes in small trucks and transports it to its facility for consolidation and top-loading into walking floor transfer trailers. The consolidated waste is then transported to a transfer station (generally Metro Central Transfer Station or Troutdale Transfer Station) and unloaded at the facility. The receiving transfer station then reloads and compacts the waste into another transfer trailer and transports it to the Columbia Ridge Landfill for disposal.

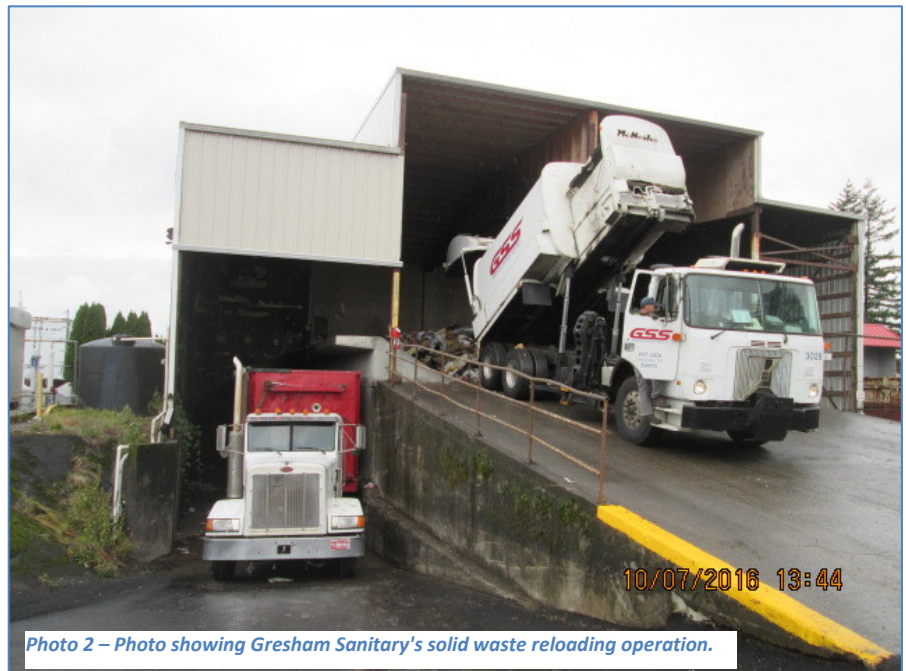


Photo 2 – Photo showing Gresham Sanitary's solid waste reloading operation.

The applicant seeks to continue its current practice of consolidating putrescible waste from its collection routes at its facility, but seeks new authority to transport its waste directly to a landfill (instead of using an intermediate transfer station) to ensure a more sustainable operation, eliminate the inefficient double-handling of waste, and avoid the added cost of using the Troutdale Transfer Station.

The applicant participated in a pre-application conference with Metro on December 14, 2015, to discuss the proposed facility and application. On September 14, 2016, the applicant submitted to Metro a solid waste facility franchise application accompanied by payment of the appropriate application fee. Metro then deemed the applicant to be complete on September 26, 2016. Metro Code states that the Metro Council must act on a franchise application within 120 days of receiving a complete application. Since the application was deemed complete on September 26, 2017, Metro must act on the application by January 24, 2017, or the proposed franchise will be deemed granted.

Proposed franchise conditions for GSS:

The COO recommends that the Metro Council approve a franchise for GSS Transfer subject to the requirements listed in Metro Code Chapter 5.01 and further subject to the special conditions described below. These proposed requirements are consistent with Metro's transfer system configuration policy and are similarly included in the franchises for other privately-owned transfer stations located within the region.

In addition to having the same conditions as that of the other franchises, the proposed franchise for GSS Transfer includes the following special conditions:

1. Franchise Term (Section 1.5)

The COO recommends establishing a three-year term for the proposed franchise to commence on December 9, 2016 and expire on December 31, 2019. Although franchises may have up to a five-year term, the COO recommends establishing a three-year term in this instance in order to align it with the expiration date of the other transfer station franchises.

2. Tonnage Allocation (Section 4.2)

The COO recommends establishing an initial tonnage allocation of 23,000 tons of putrescible waste for calendar year 2017 as requested by GSS Transfer. The COO finds this tonnage allocation amount is sufficient for the applicant's proposed waste transfer operations. Although the tonnage allocation is intended to accommodate the waste that Gresham Sanitary currently collects from within its franchised collection area, the proposed franchise does not prohibit GSS Transfer from accepting waste from third-party haulers provided that it complies with its franchise tonnage limit. The COO also recommends that the Metro Council authorize the COO to subsequently establish the same annual tonnage allocation for the remainder of the franchise term (2018 and 2019) or as otherwise described in an administrative rule to be adopted by Metro.

Staff notes that a different tonnage allocation process was used for Pride Recycling Company, Troutdale Transfer Station, and Willamette Resources, Inc. in 2017. In those cases, each facility's tonnage allocation for 2017 is based on two factors: 1) its percentage of the region's putrescible waste in 2015 (as authorized by its franchise), and 2) the total allocable putrescible waste tonnage available in calendar year 2017 based on Metro's latest "Solid Waste Forecast."⁶ In short, those franchisees are authorized to accept the same *percentage* of waste in 2017 that they were authorized to accept in 2015, relative to the region's total forecasted amount of putrescible waste to allocate.

Additionally, the proposed franchise states that each October the COO will amend the franchise to establish an annual tonnage allocation for the following calendar year throughout the term of the franchise. This allows the COO to administratively adjust the annual tonnage allocation as necessary to meet the transfer system configuration policy objectives. By adopting this ordinance, the Metro Council authorizes the COO to determine the franchisee's tonnage allocations for calendar years 2018 and 2019 as described above or as otherwise adopted by the COO or Metro Council. Staff will develop an administrative rule for Metro Council consideration that sets forth a detailed process for determining and

⁶ FY 2017-18 Solid Waste Forecast dated September 15, 2016.

adjusting future tonnage allocations. Except as explained above, the COO recommends that Metro Council not allow any additional tonnage adjustments for the franchisee until an administrative rule has been adopted.

3. Reloading of Non-Putrescible Waste (Section 3.5)

The COO recommends establishing that the franchisee may accept mixed, non-putrescible solid waste only for the purpose of consolidation, reloading and transfer to facilities that are authorized by Metro to perform material recovery. The applicant does not currently accept mixed, non-putrescible waste at its site – it transports such waste directly to a material recovery facility. In addition, the facility is not presently designed for material recovery activities and the applicant does not have plans to perform them at the site. However, staff recommends including the proposed condition in the franchise in order to meet the requirements of Metro’s Enhanced Dry Waste Recovery Program. The proposed condition is the same as that included in the Forest Grove Transfer Station franchise.

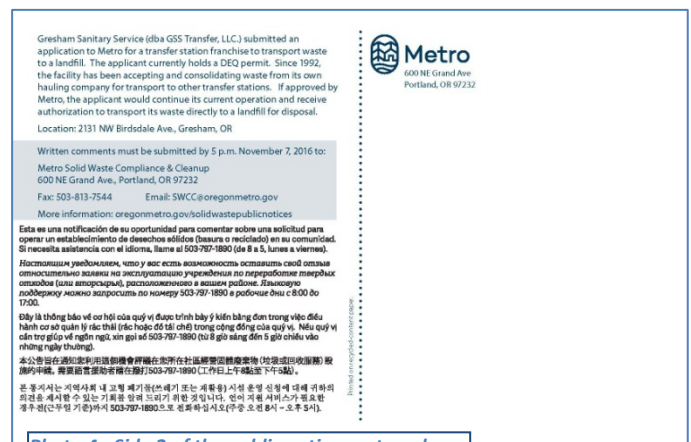
ANALYSIS / INFORMATION

Public Notice and Opportunity to Comment

Metro posted notice and provided an opportunity for the public to review and submit comments on the franchise application. The public notice was posted on Metro’s website, mailed to approximately 425 property owners and residents surrounding the proposed facility, and emailed to various other parties that are generally interested in solid waste issues. The public comment period began on October 4, 2016 and ended on November 7, 2016. Metro received one inquiry from a commenter requesting clarification about the proposed operation; however, Metro did not receive any other written comments regarding the application during that time.

Known Opposition

There is no known opposition to the proposed franchise.



Legal Antecedents

1. Metro Code Chapter 5.01, entitled "Solid Waste Facility Regulation." Specifically:
 - A. Section 5.01.070 states that a solid waste facility franchise is required for a operating a transfer station.
 - B. Section 5.01.071 requires that a prospective applicant for a franchise participate in a pre-application conference within one year before filing an application.

The applicant attended a pre-application conference with Metro on December 14, 2015, and subsequently filed its franchise application on September 14, 2016.

- C. Section 5.01.072 requires that a franchise application be filed in a format prescribed by Metro and include a description of the proposed activities and waste to be accepted at the proposed facility.

The applicant filed its application using a standard Metro form and submitted the required application fee of \$500. The application included an adequate description of the types of activities and waste to be accepted at the facility.

- D. Section 5.01.072(c) requires that a franchise application must include the following information:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the franchise.

The applicant has provided proof that it has obtained the required insurance.

- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ.

The applicant submitted a duplicate copy of its DEQ Solid Waste Disposal Site Permit No. 1392.

- (3) A duplicate copy of any closure plan required to be submitted to DEQ, or if DEQ does not require a closure plan, a closure document describing closure protocol for the solid waste facility at any point in its active life.

The DEQ does not require that the facility submit a closure plan, therefore the applicant included a closure plan with its Metro license application.

- (4) A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of closure, or if DEQ does not require such documents or does not intend to issue a permit to such facility, the applicant must demonstrate financial assurance or submit a proposal for providing financial assurance prior to the commencement of Metro-regulated activities for the costs of closure of the facility.

The DEQ does not require proof of financial assurance for this facility. The applicant states that its estimated cost of closure will be less than \$10,000 and Metro Code⁷ authorizes the COO to waive Metro's financial assurance requirements for a facility in such cases. The COO recommends waiving the financial assurance requirement for the proposed facility.

In addition, on November 10, 2016, the Metro Council adopted changes to Metro Code Chapter 5.01 which included removing Metro's financial assurance requirements.⁸ Effective in February 2017, franchisees will no longer be required to provide Metro with financial assurance if not otherwise required by DEQ.

- (5) Signed consent by the owner(s) of the property to the proposed use of the property.

Michael and Deborah Miller are the property owners and primary shareholders in both GSS Transfer and Gresham Sanitary. A signed consent form from Mr. and Mrs. Miller was included with the application.

- (6) Proof that the applicant has received proper land use approval.

Proof of land use approval has been provided in the form of a land use compatibility statement (LUCS), signed by a representative of the city of Gresham on September 24, 2008.

- (7) Identify any other known or anticipated permits required.

The facility currently holds DEQ Solid Waste Disposal Site Permit No. 1392. The permit was issued on July 15, 2009, and will expire on June 30, 2019.

- E. Section 5.01.073(f) states that the Metro Council must consider the following factors when determining whether to authorize a franchise.

- (1) Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the Regional Solid Waste Management Plan (RSWMP);

⁷ Metro Code Section 5.01.072(c)(4)

⁸ Ordinance No. 16-1387

Staff finds that the proposed activity is consistent with the regional values and policies outlined in the RSWMP⁹ and the transfer station configuration policy adopted by Metro Council.

Specifically, Chapter III of the RSWMP, entitled “Future Direction and Regional Policies,” establishes the long-term vision, values, and policies that provide direction for the region’s solid waste management system. The applicant’s proposed activity is consistent with the regional values outlined in that chapter in that the proposal seeks to improve system performance and conserve resources by maximize efficiency and effectiveness of waste transport services in the region. The regional policies outlined in that chapter also support new transfer stations entering the system if they provide a net benefit to the public including impacts on capacity, access, and ratepayers.

In addition, staff finds that the proposed activity is consistent with the configuration policy in that it promotes efficient off-route transport of waste to reduce greenhouse gas and provides an opportunity for small, locally-based businesses to participate in the region’s solid waste system.

- (2) The effect that granting a franchise to the applicant will have on the cost of the solid waste disposal and recycling services for the citizens of the region;

Approval of the proposed franchise would likely result in shifting about 23,000 tons of waste away from Metro’s transfer stations to privately-owned facilities. The lost tonnage would result in an operating loss of about \$71,000 for Metro in FY2016-17. Metro can avoid similar losses in FY2017-18 and subsequent years by increasing its disposal charge for mixed solid waste by 26 cents per ton. Additional information regarding the costs associated with the proposed franchise is provided in the budget and rate impact section of this report.

- (3) Whether granting a franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety, and welfare of Metro’s residents;

The applicant has been operating a solid waste consolidation and reload facility for its own putrescible waste since 1992. The applicant proposes to continue the same activity with the exception that its waste will now be transported directly to a landfill instead of to an intermediate transfer station prior to disposal. Since Gresham Sanitary has operated at the site since 1992 without significant impact to nearby neighborhoods or business, the continuation of this same activity at the facility is

⁹ Regional Solid Waste Management Plan 2008-2018 Update

not expected to adversely affect health, safety, or welfare of nearby residents or businesses.

- (4) Whether granting a franchise to the applicant would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood;

As discussed above in subsection E(3), the applicant has been operating a solid waste reload at the site since 1992. The applicant proposes to continue the same activity with the exception of transporting its waste directly to a landfill instead of to an intermediate transfer station prior to disposal.

- (5) Whether the applicant has demonstrated the strong likelihood that it will comply with all the requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.132 of this chapter and other applicable local, state and federal laws, rules, regulations, ordinances, orders, or permits pertaining in any manner to the proposed franchise.

Since Gresham Sanitary has operated at the site since 1992 without significant impact to nearby neighborhoods or business, the continuation of this same activity at the facility is not expected to adversely affect health, safety, or welfare of nearby residents or businesses. In addition, neither DEQ nor the city of Gresham have reported any code, environmental, or nuisance violations at the site. Based on the applicant's good compliance record, staff anticipates that GSS Transfer will remain in compliance with requirements and standards of the proposed franchise.

- F. Metro's transfer system configuration policy adopted by Metro Council via Resolution 16-4716 on July 21, 2016.

Staff finds that the proposed activity is consistent with and supports Metro's transfer system configuration policy. Specifically, the applicant's proposed activity is consistent with the configuration policy in that it would result in more efficient off-route transport of solid waste yielding a reduction in greenhouse gas and other public benefits. In addition, authorizing Gresham Transfer to perform the proposed activity is consistent with the policy in that it helps support a small, local-based business that collects solid waste and participates in the solid waste system.

Anticipated Effects

Adoption of Ordinance No. 16-1390 will authorize a new, three-year solid waste facility franchise for GSS Transfer to operate a transfer station with a tonnage allocation of 23,000 tons for calendar year 2017. If the proposed ordinance is adopted, the franchise will become effective 90 days after the date of adoption (i.e., March 8, 2017).

The applicant and the city of Gresham have requested that Metro Council consider adopting this ordinance with an emergency clause so that the proposed franchise can immediately become effective (see Attachments No. 1 and 2 to the staff report). The applicant seeks to immediately begin transporting its waste directly to a landfill to improve the efficiency and effectiveness of its internal business operations. Gresham Sanitary also reported that Troutdale Transfer Station might stop accepting its waste in early December due to the facility's concerns about staying within its tonnage allocation limit. However, notwithstanding the applicant's request, the COO does not find that an emergency exists to protect the health, safety, and welfare of the Metro area.

Budget and Rate Impacts

GSS Transfer is seeking a franchise to operate a new transfer station that may accept up to 23,000 tons of putrescible waste per year. Approval of the proposed franchise is expected to decrease Metro's share of the overall putrescible waste tonnage in the region by a commensurate amount. This proposed franchise and approach is consistent with Metro's transfer system configuration policy which reserves 40 percent of the region's putrescible waste for the publicly-owned facilities and allows Metro to allocate up to the remaining 60 percent to privately-owned transfer stations.

Whenever Metro receives lower tonnage amounts, it results in higher per unit processing costs in the short term. Therefore, approval of the proposed transfer station franchise is expected to impact Solid Waste Fund operating costs and revenues in the short term. About 15 percent of the approximately 23,000 tons of waste currently collected by Gresham Sanitary goes to Metro Central. The remaining 85 percent is transported to Troutdale Transfer Station, owned by Waste Management. Staff expects that Metro Central would experience a small decrease in putrescible waste tonnage through direct diversion of Gresham Sanitary's waste to its own facility as proposed in the application. The lost tonnage from Gresham Sanitary would result in a minimal operating loss of about \$9,000 for the remainder of the current fiscal year.

The tonnage that the applicant plans to divert from the Troutdale Transfer Station will likely be backfilled by Waste Management by shifting some of its tonnage away from Metro Central to Troutdale in order to fully utilize its facility's tonnage allocation (i.e., 77,435 tons for calendar 2017). If this were to happen, it is likely that Metro's transfer stations would eventually lose the full 23,000 tons annually of putrescible waste proposed for allocation to GSS Transfer. Since the proposed franchise would not take effect until halfway through the current fiscal year, staff expects that no more than half of these tons would be lost in FY2016-17.

Since this tonnage change was not factored into the FY2016-17 rates, this total tonnage loss in FY2016-17 could result in an operating loss at the publicly-owned stations of about \$71,000 for the current fiscal year. The shortfall could be recouped by Metro if it were to adjust its tonnage charge for mixed solid waste by 26 cents per ton during the FY2017-18 rate setting process.

Under the proposed franchise, GSS Transfer would be assessed a community enhancement fee (currently set at \$1 per ton) that Metro would collect and remit to a committee established by the city of Gresham. Community enhancement activities in the city of Gresham could receive up to \$23,000 per year under the proposed franchise. As a result of this action, the city of Troutdale enhancement committee might experience a reduction in fees commensurate with the diversion of tonnage to GSS Transfer, however this would likely be temporary if Troutdale Transfer Station backfills the lost tonnage as expected. In addition, it is likely that the Metro Central community enhancement committee would also experience a reduction in fees from any tonnage diverted to other facilities.

RECOMMENDED ACTION:

Based on the information and analysis provided in this report, the COO recommends that the Metro Council adopt Ordinance No. 16-1390 and issue a new three-year franchise to GSS Transfer as attached to this ordinance as Exhibit A which becomes effective on March 8, 2017. The COO recommends a three-year franchise in this instance because it is in the public interest to align the franchise term with that of the other privately-owned transfer station franchises that are set to expire on December 31, 2019.

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