

## **AGREEMENT TO TOLL STATUTE OF LIMITATIONS**

This Agreement to Toll Statute of Limitations (“**Agreement**”) is made and entered into by and between Republic Services of Florida, Limited Partnership, a Delaware limited partnership (“**Republic**”), and Polk County, Florida (“**County**”).

WHEREAS, Republic and the County entered into a Residential Solid Waste and Recycling Collection Franchise Agreement dated May 5, 2005 (“**Waste Collection Agreement**”);

WHEREAS, the County has asserted that it has made substantial overpayments to Republic under the Agreement in error and that it may have certain legal and equitable claims against Republic for the recovery of payments made in error;

WHEREAS, Republic has asserted that the County failed to use due care and failed to perform its obligations under the Waste Collection Agreement;

WHEREAS, in the hopes of avoiding litigation over the assertions described above, the parties wish to explore in an amicable fashion whether an out of court resolution can be reached;

WHEREAS, the parties understand that the law imposes time limits for filing litigation, called statutes of limitation, and that there are certain exceptions thereto; and

WHEREAS, in order to protect against the possible expiration of the relevant statute of limitations, the parties have agreed to enter into this Agreement to preserve from the Effective Date (hereinafter defined) forward to the Termination Date any and all claims of either party against the other and to toll and suspend the applicable statute of limitations as set out herein.

NOW, THEREFORE, in consideration of the mutual promises of the parties to this Agreement, which consideration the parties agree is sufficient in all respects, the parties hereto agree as follows:

1. Any and all statutes of limitation applicable to any causes of action or claims that arise from or are related to the Waste Collection Agreement (“**Tolled Claims**”), shall be prospectively tolled and suspended as of the Effective Date of this Agreement. The tolling and suspension of the applicable statutes of limitation for the Tolled Claims shall continue until the Termination Date of this Agreement as provided in Paragraph 2 below. The parties hereby waive any defense of statute of limitations for the period of time accruing from the Effective Date to the Termination Date. The time period during which this Agreement remains in effect shall not be included in determining whether the statutes of limitation ran against any Tolled Claims that may be brought by either party.

2. This Agreement shall continue for 120 days from the Effective Date. The parties may agree to renew the term for an additional period, in writing at any time prior to the expiration of the initial term (or any subsequent renewal term). Either party may unilaterally notify the other party, in writing, of its election to terminate the Agreement at any time and thereby stop the tolling period described in Paragraph 1 above. The Termination Date of this Agreement shall be twenty (20) calendar days following the date on which the written notice of the parties’ election to terminate the Agreement is delivered to the other party as hereinafter provided.

3. Nothing in this Agreement or in the circumstances which gave rise to this Agreement shall:

- a. affect any claim or defense available to any party as of the Effective Date of this Agreement; or
- b. be construed as an acknowledgement or admission by any party that any claim has or has not heretofore been barred, or is about to be barred, by the statute of limitations, laches, or other defense based upon the lapse of time; or
- c. operate as an admission of liability by any party.

4. This Agreement and the covenants and obligations of the parties, as well as all claims arising out of, relating to, or involving this Agreement in any way, shall be governed by the laws of the state of Florida without regard to the principles of conflicts of laws. Any and all claims between the parties arising out of, relating to, or involving this Agreement in any way shall be brought in Polk County, Florida or the Federal District Court, Middle District of Florida, Tampa Division, either of which the parties agree have personal jurisdiction over them and is a proper venue for such claims.

5. Any and all notices required, or permitted, to be given by any of the parties to this Agreement shall be in writing and shall be by electronic mail (e-mail), followed by a mailing made via Certified Mail or Federal Express, at the following addresses:

For: Republic  
c/o Ronald L. Clark  
Clark, Campbell & Lancaster, P.A.  
500 S. Florida Ave, Suite 800  
Lakeland, Florida 33801  
Email: [rlark@clarkcampbell-law.com](mailto:rlark@clarkcampbell-law.com)

For: County  
c/o Michael Craig  
County Attorney  
330 West Church Street  
Bartow, Florida 33830  
Email: [MichaelCraig@polk-county.net](mailto:MichaelCraig@polk-county.net)

6. This Agreement shall be binding on the parties to this Agreement and their respective assignees, successors, beneficiaries or heirs at law.

7. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understanding of the parties. There are no other covenants, agreements, promises, terms, provisions, conditions, undertakings or understandings, either oral or written, concerning the Agreement. This Agreement shall not be contradicted, explained or supplemented by any prior or contemporaneous written or oral statements, proposals or representations.

8. No supplement, modification or amendment of this Agreement shall be binding unless in writing executed by all the parties. No waiver of any of the provisions of this Agreement shall be, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

9. The terms of this Agreement are contractual and not mere recitals and no representations have been made which are not contained herein. This Agreement was drafted with the input and comments of all parties and the advice of their counsel. In the event of a dispute concerning the interpretation of any provision of this Agreement or any related document, the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply.

10. The parties individually represent, warrant and agree that: (i) they are fully aware and clearly understand all of the terms and provisions contained in this Agreement; (ii) they have voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Agreement and the documents executed in connection with this Agreement; (iii) they are not relying on any representation, either written or oral, express or implied, made to them by any person other than as set forth in this Agreement; and (iv) the consideration received by them to enter into this Agreement and the arrangement contemplated by this Agreement has been actual and adequate.

11. This Agreement may be executed in one or more counterparts, each of which together shall constitute one and the same original Agreement. Facsimile, electronic (e-mail or PDF) and photocopies of this Agreement shall be considered originals for all purposes, including, but not limited to, any court proceedings.

12. Each of the individuals signing this Agreement represents and warrants that he has full power and authority to bind the party identified above his name.

IN WITNESS HEREOF, the parties have executed this Agreement to be effective on September\_\_\_\_, 2012 (“**Effective Date**”).

ATTEST:

RICHARD M. WEISS  
Clerk of the Board

BOARD OF COUNTY COMMISSIONERS  
POLK COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Approved by BoCC: \_\_\_\_\_

Reviewed as to form and legal sufficiency

\_\_\_\_\_  
County Attorney’s Office

\_\_\_\_\_  
Date

AS TO REPUBLIC:

REPUBLIC SERVICES OF FLORIDA,  
LIMITED PARTNERSHIP, a Delaware  
limited partnership,  
through Republic Services of Florida GP, Inc.,  
a Delaware corporation, its General Partner

WITNESS:

By: \_\_\_\_\_  
[Signature of Corporate Secretary]  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_