

GENERAL USE TAX REFUND AGREEMENT  
FORO ENERGY, INC.

THIS GENERAL USE TAX REFUND AGREEMENT ("Agreement") is made and entered into as of the 18th day of November, 2014, between the CITY OF LITTLETON, a Colorado home rule municipality (the "City"), and FORO ENERGY, INC., a Delaware corporation ("Foro Energy").

WHEREAS, the City Council has found and determined that the stimulation of economic development and employment opportunities and the establishment of a sound tax base serves the general welfare of the citizens of Littleton; and

WHEREAS, the City Council intends to further its economic development and employment objectives through the retention and expansion of Littleton's primary employers; and

WHEREAS, Foro Energy has been an existing primary employer in Littleton since 2009, currently employing approximately 20 high paid employees in the City; and

WHEREAS, Foro Energy operates a second location in Houston, Texas; and

WHEREAS, Foro Energy has been issued 15 patents to date for advanced laser technologies, offering potential for step change performance improvement in the oil, gas, geothermal, and mining industries, and has been considering which of its locations to expand; and

WHEREAS, Foro Energy has been approved for a Job Growth Incentive Tax Credit (JGITC) by the Colorado Office of Economic Development and International Trade (OEDIT) for an expansion plan. This plan presented to OEDIT targets expansion of its business operations in the City by investing an estimated \$2.5 million in equipment in 2015, and adding approximately 8 high paying, primary jobs in 2015 and approximately \$10 million in equipment and 58 additional high paying, primary jobs over the next 8 years; and

WHEREAS, Foro Energy as part of the targeted expansion plan intends to maintain continued operations in the City of Littleton for at least eight (8) years after the date of this Agreement.

WHEREAS, the City desires to offer certain business development incentives in the form of a general business use tax refund to Foro Energy as an inducement to retain and expand Foro Energy in the City of Littleton; and

WHEREAS City Council finds the execution of this Agreement will serve to provide benefits and advance public interest and welfare of the City and its citizens by retaining and expanding Foro Energy within the City.

NOW THEREFORE, in consideration of the mutual promises set forth below, the City and Foro Energy agree as follows:

1. Public Purpose. The City Council hereby declares that there are particular public purposes for which the economic development incentives contained in this Agreement overcome any individual interests incidentally served by retention of the tax refund by Foro Energy. The Council finds that there will be the general benefit to the citizens of Littleton of increased employment, long-term real property tax base growth, and related economic

development benefits. In addition to these general public benefits, the City Council finds that there are at least two discrete and particularized public purposes:

- a. These incentives will permit Foro Energy to expand its existing Littleton-based manufacturing business, which will contribute to the development of new businesses and the expansion of existing businesses, and will result in long-term expansion of new employment and real property tax base within the City;
- b. These incentives will provide direct and indirect benefits to the City's commercial markets. These public purposes outweigh any incidental individual interests and are not a special aid, grant or privilege.

2. Use Tax Rebate. The City, as an economic development grant, and for a period of 8 years inclusive of the tax years 2015-2022, shall rebate to Foro Energy, 50% of the use taxes paid to the City by Foro Energy for equipment purchased specific to its expansion. For purposes of this Agreement, "expansion" refers to the addition of a minimum of eight high paying jobs and the taxable equipment purchased over the next five years, in accordance with Chapter 9 of Title 3 in the Littleton Municipal Code, and "high paying" or "high-paid" shall mean having an annual salary equal to or exceeding one hundred thousand dollars (\$100,000)

In no event shall the amount of the use tax rebated, pursuant to this paragraph 2 exceed 50% of the 3% use tax paid on equipment deemed as taxable. Any rebate issued by the City of Littleton may not be taken as a credit on future tax returns.

a. At any time within two years of the payment in full for all Use Taxes paid to the City related to the expansion, Foro Energy shall provide evidence to the Economic Development Department of the City that it continues to maintain operations in the City. For purposes of this Agreement, "maintain operations" shall mean (1) having legal possession and operating within an approximately 25,000 square foot facility located within City limits and (2) employing at least 20 high-paid employees at an average salary of greater than \$100,000 at such City-located facilities and (3) utilizing best efforts to employ at least 8 additional high-paid employees at such City-located facilities. Upon receipt of this documentation the City will make payment of the use tax rebate as set forth below.

b. Payment of Rebates. The initial use tax rebate will be paid by the City within thirty (30) days following payment in full of the use taxes due and after receipt of the evidence described in subsection 2a. Beginning with 2015, and continuing through the tax year ending December 31, 2022, and so long as Foro Energy complies with all other terms and conditions of this Agreement, Foro Energy may make a written request for a use tax rebate in the amount of 50% of the 3% use tax paid on equipment deemed as taxable, within thirty (30) days after payment in full for all taxes due in that tax year. Assuming all conditions are met, the use tax rebate, shall be paid within thirty (30) days of such request. No interest shall be paid on the amount subject to rebate.

3. Continued Operations in the City. Foro Energy will request a use tax rebate for a tax year only if it continues to maintain operations in the City of Littleton.

4. Violations and Remedies. If Foro Energy fails to fulfill its obligations under this Agreement and after the City has given at least thirty (30) days written notice to Foro Energy,

and Foro Energy has had the opportunity to cure such default within the prescribed period, but if such default is not cured, Foro Energy shall be liable for repayment of the use tax rebate that it has received up to that date. The City shall have all remedies available to it, in law or in equity, including, but not limited to, Specific Performance against Foro Energy for enforcement of such repayment obligation. If Foro Energy fails to repay the use tax rebate and the City is awarded the payment by a court order, Foro Energy shall pay the City's attorney's fees, costs and expenses of litigation, and interest on the amount of the use tax rebate from the date of the notice for repayment.

5. Limitations.

a. Nothing herein shall in any way bind the City to act on any zoning, Conceptual Site Plan, Development Permit, or subdivision application related to the Foro Energy property.

b. Nothing herein shall be construed to grant to, or create in Foro Energy any right, claim, lien or priority in or to the City's use tax revenue superior to or on a parity with the rights, claims, or liens of the holders of any use tax revenue bonds, notes, certificates or debentures payable from or secured by any use taxes, existing or hereafter issued by the City. Moreover, nothing herein shall be construed to deny or limit the City's full authority to issue such use tax bonds. Accordingly, Foro Energy specifically acknowledges and agrees that all rights of Foro Energy to the use tax rebate contemplated under this Agreement are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such use tax revenue bonds, notes, certificates or debentures payable from or secured by any use taxes, existing or hereafter issued by the City. It is further acknowledged that the use tax rebate to Foro Energy shall be available only from City revenues and only to the extent herein provided, and no obligation of the City pursuant to this Agreement shall provide access to any other City revenue source, nor shall such obligation be deemed to create any pledge of credit or invoke the full faith and credit of the City.

6. General Obligations of Foro Energy.

a. Foro Energy represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware; is qualified to do business in the State of Colorado; has the right, power, and legal capacity to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto; and the execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions, and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement and such documents and such performance and observance valid and binding upon Foro Energy.

b. Foro Energy agrees that the execution and delivery of this Agreement, the documents required hereunder and the consummation of the transaction contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to Foro Energy or Foro Energy's governing documents; (ii) result in the breach of any of the terms or provisions of, or constitute a default under, any agreement or other instrument to which Foro

Energy is a party or by which it may be bound or affected; or (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of Foro Energy.

c. Foro Energy represents and warrants that it knows of no action, suit, proceeding or governmental investigation that is threatened or pending contesting the powers of Foro Energy or any of its principals with respect to the expansion or this Agreement that has not been disclosed to the City.

d. Foro Energy represents and warrants that to the best of its knowledge, Foro Energy has the necessary financial and legal ability to permit the Agreement and to acquire the additional equipment and construct the expansion.

e. Foro Energy agrees to construct or cause to be constructed the expansion in compliance with plans and specifications approved by the City.

f. Foro Energy agrees to comply with all City codes, ordinances, resolutions and regulations, and pay all taxes, fees, and expenses due to the City. If Foro Energy is in violation of the provisions of this section, the City may withhold any use tax rebate described in Section 2 provided for under this Agreement until such time as the violations are cured or abated.

g. Except as otherwise provided in this Agreement, Foro Energy agrees that it is responsible for all the costs and expenses associated with development of its property in Littleton, including any demolition, environmental assessment and remediation, development and construction.

7. Notices. All notices required or permitted hereunder shall be in writing and shall be effective upon mailing, deposited in the U.S. mail, postage prepaid, and to the intended recipient as follows:

THE CITY OF LITTLETON  
2255 West Berry Avenue  
Littleton, Colorado 80125  
ATTN: Economic Development Director

FORO ENERGY, INC.  
8020 Southpark Circle, Suite 500  
Littleton, CO 80120  
ATTN: Joel Moxley

Any party can change its address by written notice to the other given in accordance with this paragraph.

8. Binding Effect. This Agreement shall be binding upon the City and Foro Energy, their respective legal representatives, assigns, successors, and heirs; provided that nothing in this Section shall be construed to permit assignment unless the provisions of Section 17 have been met.

9. Entire Agreement. This instrument shall constitute the entire agreement between the City and Foro Energy and supersedes any prior agreements between the parties and their

agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

10. Subordination. The City shall meet its obligations under this Agreement only after full payment of use taxes due has been satisfied.

11. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, or any other constitutional or statutory provisions, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. Foro Energy understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or recourse to the City and, further, shall not affect, impair or invalidate any of the remaining terms or provisions of this Agreement.

12. Waiver of Breach. No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent to a breach of this Agreement, shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either party by giving written notice to the other party may, but shall not be required to, waive any of its rights or any condition or action to be undertaken by the other party. A written waiver by either party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

13. Captions. The captions of the articles and sections of this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

14. Delays. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts God, fires, floods, strikes, orders of civil or military authorities, failure to obtain permits from state or federal agencies, or other causes, which are beyond the reasonable control of such parties.

15. Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with the City of Littleton Charter the Littleton Municipal Code. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation; they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator or panel of mediators for the purpose of resolving such a dispute. In the event such dispute is not fully resolved by mediation or otherwise within 60 days after a written request for mediation by either party, then either party may commence legal proceedings regarding the dispute. The venue for any lawsuit concerning this Agreement shall be in the District Court of Arapahoe County, Colorado.

16. Legal Challenge. The City shall have no obligation to make any rebate payment hereunder during the pendency of any legal challenge to this Agreement. The parties will cooperate in defending the validity or enforceability of the Agreement against any challenge by any third party.

17. Assignment. This Agreement is personal to Foro Energy. Foro Energy shall not assign any of the obligations, benefits or provisions of the Agreement in whole or in part without

the expressed written authorization of the City. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.

18. No Joint Venture. Nothing in this Agreement is intended or shall be construed to create a joint venture between the City and Foro Energy.

19. Integration and Amendment. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

20. No Third Party Beneficiaries. Neither party shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto. Further, neither party shall be bound by any contracts or conditions that Foro Energy may negotiate with third parties related to the development of its Littleton facilities. Nothing expressed or to be implied by this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions hereof.

21. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement so long as the intent of the parties as expressed in this Agreement may still be accomplished. To that end, any such provisions, covenants, agreements or portions of this Agreement are declared to be severable.

21. Non-liability of Employees and Agents. No official, employee, agent or consultant of the City shall be personally liable to Foro Energy in the event of a default, or breach by the City.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

**FORO ENERGY, INC.:**

FORO ENERGY, INC., a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY:**

CITY OF LITTLETON, a Colorado home rule municipality

\_\_\_\_\_  
Phil Cernanec, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney