AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF LAKEWOOD AND THE CITY OF DUPONT PROVIDING FOR THE PROVISION OF MUNICIPAL COURT, PROSECUTION, PUBLIC DEFENDER AND RELATED SERVICES

WHEREAS, the City of DuPont, "DuPont" incorporated as a City in 1951 and assumed authority and jurisdiction with respect to criminal and traffic offenses occurring within the corporate boundaries thereby created; and

WHEREAS, the City of Lakewood, "Lakewood" has the capacity to provide municipal court, prosecution, public defender and related services to DuPont in a manner beneficial to both parties and that DuPont desires to use these services; and

WHEREAS, DuPont and Lakewood wish to cooperate and enter into this Agreement for the orderly and efficient processing of traffic infractions, parking infractions, criminal traffic cases, criminal non-traffic misdemeanors and any other matters within the jurisdiction of a Municipal Court through services provided by and held at Lakewood; and

WHEREAS, included in the services provided by Lakewood to DuPont shall be a detail of statistics identifying caseload, type of case and other matters of interest to DuPont; and

WHEREAS, DuPont has determined that an agreement with Lakewood for the provision of municipal court services under the Interlocal Cooperation Act would be more efficient and cost effective than providing its own facilities, materials, and personnel and the parties agree that provision of services as detailed in this Agreement are in the best interests of the citizens of both cities; and

WHEREAS, Title 39.34 of the Revised Code of Washington authorizes joint and cooperative agreements between public agencies;

NOW, THEREFORE, the parties agree as follows:

A. Purpose. The purpose of this Interlocal Agreement is to make all necessary arrangements for the processing of any matters within the jurisdiction of DuPont using municipal court (including a judge and court staff), prosecution, public defender and related services provided by Lakewood in Lakewood Municipal Court pursuant to RCW 39.34. This is to include any ancillary services such as probation/community services, work crew, interpreter services, statistical tracking; legal services such as ordinance work and any work related to appeals. Jail and Police services are specifically excluded from this agreement.

B. Services. DuPont shall establish the City of DuPont Municipal Court and shall take all action necessary, including the adoption of all necessary ordinances as if operating such court independently. DuPont shall, in its discretion, establish Court Rules applicable to the DuPont Municipal Court, appoint a judge, and shall set appropriate fines, penalties and processes. Lakewood, through this Agreement, shall provide the following services to DuPont:
1. **Municipal Court Services.** Municipal court services include all court services required by state statute, court rule, City ordinance, or other regulation as now existing or hereafter amended. These services include, as applicable, the filing, processing, adjudication and penalty enforcement of all City cases filed on January 1, 2015, or any date thereafter for the duration of this agreement, issuance of search and arrest warrants, procedures of establishing bail, arraignments and plea hearings, pretrial motions and evidentiary hearings, discovery matters, notification and subpoenaing of witnesses and parties, bench and jury trials, pre-sentence investigations, sentencing, pre-trial motions, the duties of courts of limited jurisdiction regarding appeals, and all other court functions as they relate to municipal court. Lakewood will provide foreign language and sign language services as needed for defendants in DuPont Municipal Court cases. Lakewood will provide probation services to DuPont criminal defendants. Lakewood shall provide all necessary personnel to perform such services in a timely manner as required by law and court rule.

2. **Appointment of Judicial Officers.** DuPont may but is not required to, by this Agreement, appoint a Lakewood Municipal Court Judge as a Judge of the DuPont Municipal Court. Similarly, DuPont may, but is not required to appoint Lakewood Municipal Court Judges Pro Tem as Judges Pro Tem of the DuPont Municipal Court. In the event that DuPont appoints a judge other than the Lakewood Municipal Court Judge then DuPont shall consult with and consider input from the Lakewood City Manager during the appointment process. Any such appointments shall require further negotiation between the parties pursuant to Section D.1 of this agreement.

3. **Prosecution Services.** All criminal cases covered by this agreement shall be reviewed, filed and fully prosecuted by Lakewood Legal Department staff from initial review of referred cases through final adjudication including appeal. Lakewood Legal Department shall have final case disposition authority on all cases except those assigned to outside counsel at the request of DuPont. DuPont shall support Lakewood’s prosecution of DuPont cases fully including attendance at hearings, production of evidence and coordinating with the assigned prosecutor as needed to properly process each case. The Attorney for DuPont, or designee, shall be authorized to directly prosecute any matter within DuPont jurisdiction upon notice to Lakewood within 15 days of the filing of the case. All prosecution services are to be provided to DuPont with sufficient input and direction from DuPont to ensure consistency with the best interests of the citizens of DuPont.

4. **Public Defender Services.** Public Defender services will be provided to DuPont as an extension of the current agreement between Lakewood and the current Public Defender. Lakewood shall provide in any professional services agreements between Lakewood and a contractor providing public defender services, that such contractor provide such services in compliance with the Washington Supreme Court’s Standards for Indigent Defense Services.
5. **Other Services.** Lakewood and DuPont shall communicate and exchange information sufficient to evaluate the adequacy of services provided for in this agreement. Lakewood is expected to provide ancillary services including statistical information and appellate work. Lakewood shall be responsible for transporting all DuPont in-custody defendants from Pierce County Jail, Nisqually Jail or any other jail where Lakewood and DuPont defendants are held on misdemeanor and gross misdemeanor charges.

6. **Matters Reserved to Lakewood.** Lakewood reserves the right to implement matters requiring compliance with statutory and judicial mandates, which includes, but is not limited to, the Standards for Indigent Defense and personnel matters pursuant to General Rule 29 of the Washington Courts.

7. **Supplies and Forms.** Lakewood will provide and pay for all forms and paperwork necessary for processing DuPont Municipal Court cases as determined by the DuPont Municipal Court Judge and/or Court Administrator. By way of illustration and not limitation, these include case setting forms, infraction hearing forms, criminal hearing forms, warrants and general office supplies.

8. **Court Security.** Lakewood shall provide all necessary security for the courtroom used by DuPont.

9. **Work Crews.** In 2015 and subsequent years, Lakewood will provide DuPont with Work Crew for 12 days per year. The parties agree to review this calculation once every six months as the number of work crew candidates is variable.

C. **Property.** This Interlocal Agreement does not provide for the acquisition, holding or disposal of real or personal property. DuPont Police shall be responsible for all items of evidence related to criminal prosecution.

D. **Financial Provisions.** In consideration for the services provided in this Agreement, the parties agree to the following:

1. In the event that DuPont appoints Lakewood’s judge as judge of the DuPont Municipal Court, DuPont shall pay to Lakewood an annual fee of Eighty Nine Thousand Forty Two Dollars ($89,042). The annual fee shall be determined based on the cost of the Lakewood Municipal Court and includes factors such as the cost of the court system and administrative costs associated with running the court. This fee will include the municipal court judge and court administrative staff salaries. The fee will be reviewed and adjusted on an annual basis beginning one year after the effective date of this agreement. The parties will review the fees and costs associated with providing services under this agreement and will make necessary adjustments to such fees and costs. Necessary adjustments to the fees shall be based on an increase or decrease in the following: case filings, personnel and professional services costs, facility operating costs and material costs. In addition, adjustments shall be necessary based upon any new or increased cost or fee mandated by federal, state or local law. The parties
shall negotiate annual adjustment to the fees in good faith. This fee shall be invoiced and paid monthly. In the event that DuPont does not appoint Lakewood’s judge, this fee shall be renegotiated with the expectation that this amount will be greater.

2. DuPont shall retain all fees, costs, penalties and fines, assessed in the DuPont Municipal Court for the duration of this Agreement. Mandated payments to the State and any other financial obligations attendant to operating a Municipal Court shall be processed in the normal monthly course along with remittance of revenue to DuPont on a quarterly basis. Any new programs established after the effective date of this Agreement shall not be included but shall be addressed by the parties in a separate written amendment hereto.

E. Agreement Administration. The parties are expected to work cooperatively when handling DuPont cases. No employee of agent of Lakewood shall be deemed an employee or agent of DuPont as a result of this Agreement. None of the benefits provided by Lakewood to its employees or agents, including but not limited to, compensation, insurance and unemployment insurance are available from Lakewood to the employees or agents of DuPont. The Attorney for DuPont is to consult with Lakewood departments as necessary regarding the prosecution of DuPont cases. Interested DuPont employees are to be invited to interdepartmental meetings regarding Court process. Where necessary Lakewood employees are to be available to DuPont employees and/or Council to discuss court process, prosecutorial philosophy or other matters of interest to DuPont.

1. Dispute Resolution. Disputes between the parties that cannot be resolved at the department level are to be resolved by the respective City Managers/Administrators. It is understood between the parties that this Agreement is of benefit to both and there is a common interest in working through issues to continue the Agreement.

2. Reporting. Lakewood shall provide DuPont with monthly reports summarizing court activity during which services are provided. These reports shall include a summary of all court services provided for the month, data about the amount of fines and forfeitures collected by Lakewood for infractions and complaints and a revenue breakdown of payments made to the Washington State Treasurer, Pierce County and any other entities on behalf of DuPont. DuPont shall identify any deficiencies in such monthly reports and, where feasible, Lakewood shall amend the reports accordingly.

3. Special Emphasis. DuPont shall identify any areas of special emphasis and Lakewood shall provide opportunities for input and reporting specific to those areas.

F. Indemnification. In executing this Agreement, Lakewood does not assume liability or responsibility for or in any way release DuPont from any liability or responsibility which arises in whole or in part from:
1. The existence or effect of any DuPont ordinance; or

2. Any prosecution conducted by DuPont's Attorney. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such ordinance or prosecution is at issue, DuPont shall defend the same at its sole expense and if judgment is entered or damages are awarded against DuPont, Lakewood, or both, DuPont shall satisfy the same, including all chargeable costs and attorneys' fees.

Lakewood shall indemnify, defend, and hold harmless DuPont, its officers, agents and employees from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatever, including costs and attorneys' fees in defense thereof, for injuries, sickness or death of persons (including employees of DuPont), or damage to property, or the violation of any person's civil rights, which is caused by or arises out of Lakewood's acts, errors or omissions with respect to the subject matter of this Agreement, or any act or omission of any agent retained by or contracted with by Lakewood to provide services covered by this Agreement provided, however, that:

1. Lakewood's obligation to indemnify, defend and hold harmless shall not extend to injuries, sickness, death, damage or civil rights violations caused by or resulting from the actions or negligence of DuPont, its Police Department or its officers, agents or employees; and

2. Lakewood's obligation to indemnify, defend and hold harmless for injuries, sickness, death, damage or civil rights violations caused by or resulting from the concurrent actions of negligence of Lakewood or its agents and DuPont or its agents shall apply only to the extent that Lakewood's or its agents' actions or negligence cause or contributed hereto.

Lakewood does not by this Agreement assume any contractual obligations to anyone other than DuPont, and DuPont does not assume any contractual obligations to anyone other than Lakewood. Lakewood and DuPont expressly eliminate any third-party beneficiary to this Agreement.

G. Termination. Lakewood or DuPont shall have the right to terminate this Agreement, provided that either notifies the other nine (9) months prior to such termination to allow the parties sufficient time to address alternate measures.

H. Term. The initial term of this Agreement is for four (4) years through December 31, 2019, with the parties consulting on a regular basis to establish whether amendments are needed to achieve the best results possible for both parties. Either party shall notify the other in writing no later than nine months prior to anticipated termination or at the earliest date allowed by State law. This allows both parties sufficient time to address alternative measures timely within the budget session. Without such notice, the Agreement automatically renews for four (4) year increments.

I. Insurance. For the duration of this Agreement, Lakewood and DuPont shall maintain
liability insurance coverage of the same coverage levels.

J. Waiver. Failure to insist upon strict compliance with any terms, covenants or conditions of this contract shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

K. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed as if such invalid or unenforceable provisions were omitted, unless such invalidity or unenforceability destroys the purpose and intent of this contract.

L. Entire Contract, Possible Amendments. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind either of the parties. To be effective, any proposed amendments to this Agreement that are mutually agreed upon by the parties must be incorporated by written amendments to this Agreement. Amendments can be made at any time during the term of this agreement.

M. Approval by City Council and Recording. Each party to this Agreement warrants that its City Council has approved and authorized the signatories below to execute this Agreement. Consistent with RCW 39.34.040, this Agreement shall be filed for recording with the Pierce County Auditor upon full execution, or in lieu of recording with the auditor, published electronically on the websites of both parties.

N. Notice. Any notices required to be given under the Agreement shall be deemed sufficient if in writing and delivered personally or sent via certified mail to the following parties at the following addresses:

To Lakewood:  
City Manager  
6000 Main Street SW  
Lakewood, WA 98499

To DuPont:  
City Administrator  
1700 Civic Drive  
DuPont, WA 98327

O. Limitation on Contract. DuPont’s current Agreement with Pierce County for Court Services ends on December 31, 2014. To the extent that contract is contested, litigated, extended or renewed by a court of competent jurisdiction or an arbitrator having authority over any such dispute, unless Lakewood and DuPont agree otherwise, neither DuPont nor Lakewood will be responsible for performance and payment under this contract during any period of time during which DuPont may be obligated to Pierce County for Court Services.
IN WITNESS WHEREOF, the parties have executed this Agreement this 23rd day of December, 2014

CITY OF LAKEWOOD

John J. Caulfield
City Manager
Dated: 12/23/14

Attest:

Alice M. Bush, MMC
City Clerk

Approved as to form:

Heidi Ann Wachter, City Attorney
Date: 12/31/2014

CITY OF DUPONT

Thomas E. Danek, Jr.
City Administrator
Dated: 

Approved as to form:

John P. Long, Jr., City Attorney
Kenyon Disend, PLLC
Date: 