

# SANTAQUIN CITY NON-EXCLUSIVE USE AGREEMENT

This Agreement is entered this 12 day of July, 2012, between Santaquin City, a municipality of the State of Utah ("City"), and Painless Entertainment, Inc.

## RECITALS

**WHEREAS**, Santaquin City is a municipality of the state of Utah and as such owns and operates a public library, located at 10 West 100 South, Santaquin, Utah ("Library"); a police station, located at 275 West Main Street, Santaquin, Utah ("Police Station"); and a museum, located at 45 West 100 South, Santaquin, Utah ("Museum").

**WHEREAS**, Painless Entertainment, Inc. ("Producer") is in the business of producing certain television programs; and

**WHEREAS**, Producer is producing a program presently titled "THE DEAD FILES" (the "Program") and desires to photograph and record certain scenes associated with the Program in the Library, Police Station and Museum and to utilize some services of the City and certain of its employees in connection with the Program; and

**WHEREAS**, the City is willing to allow Producer to utilize the Library, Police Station and Museum and certain services upon certain terms and conditions; and

**WHEREAS**, the parties desire now to enter into an agreement to accomplish the purposes described herein;

**NOW THEREFORE**, the parties hereto agree as follows:

### 1. Use of the Library, Police Station, Museum Facilities and City Parks.

City hereby grants to Producer the right to non-exclusive use of the Library, Police Station, Museum and City Parks including: the right to enter upon and use the Library, Police Station, Museum and City Park properties and the contents thereof (including, any signs located thereon and any tradenames, trademarks, copyrights, logos, words, symbols or images contained on such signs) and the appurtenances thereto; the photographing and recording of certain scenes during production of the Program from the interiors and the exteriors of the Library, Police Station, Museum and City Park; similar uses as necessary during any extension, re-shooting or preparation of publicity or promotion therefore; and placement of all facilities and equipment necessary for production, in and/or around the Library, Police Station, Museum and City Parks. All uses of the Library, Police Station, Museum and City Parks shall be scheduled with the City and approved prior to use, which approval(s) shall not be unreasonably withheld. Producer's use of the Library, Police Station, Museum and City Parks properties shall commence on or about ~~July 18, 2012~~ (subject to change on account of weather conditions or changes in production schedule), and continue until on or about July 30, 2012, but in any event until completion of all

July 12, 2012

Ben Reeves, Santaquin City Manager

scenes and work required. All physical embodiments of filming, recording and photography on the Library, Police Station, Museum, and City Parks properties shall hereinafter be known as the "Materials". City grants to Producer all rights of every kind in and to the Materials, including without limitation the right to exploit the Materials throughout the world, an unlimited number of times, in perpetuity, in any and all media, now known or hereafter invented, and in and in connection with the Program or otherwise and for advertising and promotional purposes in connection therewith, and all rights, including copyright, in the Materials shall be and remain vested in Producer, and City shall not have any right of action against Producer or any other party arising out of any use of said Materials, whether or not such use is, or may be claimed to be, defamatory, untrue or censorable in nature; provided, however, that Producer agrees that the Materials recorded and used pursuant to this Agreement shall not intentionally defame City. Producer shall have the right to refer to the Library, Police Station or Museum by any real or fictitious name(s) and the right to refer to any real or fictitious events as having occurred at the Library, Police Station, Museum or City Park.

## **2. Use of City Employees.**

Producer may utilize the services of City employees in connection with Producer's use of the Library, Police Station, Museum or City Parks under the following conditions: (a) participation of a City employee in the photographing and/or recording of the production shall be voluntary; (b) any City employee may refuse to provide assistance or service in connection with this Agreement; and (d) no City employee may be interviewed, photographed, or recorded in any way in connection with the Production, unless the employee has executed an appearance release form.

## **3. Ownership of Production.**

City relinquishes all rights of ownership and use in and to the Materials and the Program, including copyright, which be and remain vested in Producer.

## **4. Non-Exclusive Use.**

Producer's use of the Library, Police Station, Museum and City Parks pursuant to this Agreement shall be "non-exclusive" and shall not materially impede any use to which the Library, Police Station and Museum properties are available to City representatives or the public.

## **5. Hazardous Items.**

Producer shall not keep or allow to be kept, store, keep or maintain anywhere in the Library, Police Station, Museum and City Parks any firearm, fireworks, explosives or other dangerous weapons.

## **6. Cleaning and Repair.**

Producer may place all necessary facilities and equipment in the Library, Police Station, Museum and City Parks and agree to remove same after completion of work and leave the

property in as good of condition as when received, reasonable wear and tear excepted. Upon termination of this Agreement, Producer shall remove all trash, litter and other items to the large trash dump bins provided by City at the Library, Police Station, Museum and City Parks. In the event City would like to make a claim against the Producer with respect to the provisions of this paragraph, City shall make any claims in writing no later than five (5) business days after Producer has vacated the Library, Police Station, Museum and City Parks. Any such claim not timely made shall be waived.

#### **7. Term.**

This Agreement shall become effective upon execution by both of the parties.

#### **8. Compliance with Laws.**

Producer shall fully comply with all applicable laws during use of the Library, Police Station, Museum and City Parks.

#### **9. Indemnification and Insurance.**

Producer shall indemnify and hold harmless City, and City's agents, successors and assigns, from all claims, damages and liabilities occurring or accruing as a result of Producer use of the Library, Police Station, Museum or City Parks or the violation of any provision of this Agreement. Producer shall carry property and liability insurance with minimum limits of \$1,500,000 per person and \$3,000,000 per occurrence to cover all activities engaged in or sponsored by Company and Producer, or related in any way to Company's and Producer's use of the Facilities, and shall provide City with a certificate of insurance naming Santaquin City as an additional insured.

#### **10. Assignment.**

City agrees that Producer may license assign or otherwise transfer this agreement and all rights granted by City to Producer under this agreement to any person or entity.

#### **11. Remedies on Default.**

In the event that Producer is in material default of a material provision of this Agreement while Producer is making use of the Library, Police Station, Museum or City Parks, City may terminate this Agreement. Termination shall become effective upon City providing Producer with written notice; provided, however, that Producer shall be given a reasonable amount of time to cure any such material default prior to termination. Notwithstanding the foregoing, City's sole remedy for breach of this contract by Producer shall be an action for money damages. In no event will City be entitled to injunctive or other equitable relief. Producer has no obligation to include the Library, Police Station, Museum or City Parks in the Program or in any other production.

## **12. Access by City.**

City or City's agent shall have the right to enter the Library, Police Station, Museum and City Parks to examine the same or to assure compliance with this Agreement as City may reasonably deem necessary or desirable. Nothing herein shall be deemed to impose upon City any obligation for the care, maintenance or repair of the Library, Police Station, Museum and City Parks except as otherwise herein specifically provided.

## **13. Authority.**

Each of the parties represents and warrants that it is authorized to enter into this Agreement.

## **14. Entire Agreement.**

This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements between the parties. This Agreement may not be changed by any party hereto except by written agreement between the parties.

## **15. No Joint-Venture or Partnership.**

Nothing in this Agreement shall be construed to imply or constitute a joint venture or partnership of the City with either Company or Producer.

## **16. Notices.**

Any notices required to be sent to the parties hereunder may be made by email, facsimile, personal delivery, or certified or registered mail, return receipt requested to the following:

Santaquin City  
c/o City Manager  
275 West Main Street  
Santaquin, Utah 84655

With a copy to: Nielsen & Senior  
Brett B. Rich  
5217 South State Street, Suite 400  
Salt Lake City, UT 84107

Painless Entertainment, Inc.  
1410 S. Centinela Ave.  
Los Angeles, CA 90025

With a copy to: Dembitzer & Dembitzer LLP  
100 Wall St., 23<sup>rd</sup> Floor  
New York, NY 10005  
Attn: Stephanie J. Sanet, Esq.



**17. Partial Invalidity.**

The invalidity or unenforceability of any term, covenant or condition of this Agreement shall not affect the validity of the remainder of this Agreement, which shall continue to be valid and enforceable.

**18. Binding.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, agents, personal representatives, successors and assigns.

**19. Paragraph Numbers and Headings.**


Headings and paragraph numbers have been inserted herein solely for convenience and reference and shall not be construed to affect the meanings, construction or effect of this Agreement.




**SANTAQUIN CITY:**

  
James E. DeGraffenried, Mayor

ATTEST:

  
Susan B. Farnsworth, City Recorder

**PAINLESS ENTERTAINMENT, INC.**

By: 

Its: J McMahon  
(producer)