

Cash Advances to Commercial Promoters Policy

Commercial promoters and sponsors occasionally request that the University advance cash for use in the promotion of an event to be hosted in a licensed PAC facility. As a general rule, the University does not advance cash. In certain rare circumstances (contemplated to be no more than once per year), the University, in its sole discretion, may advance cash to promoters/sponsors in accordance with the following guidelines:

1. A license agreement for the use of a PAC facility must be satisfactorily executed by promoter/sponsor and University.
2. The promoter/sponsor must submit a written application on the form attached hereto as Exhibit A.
3. A rider to the License Agreement in the form of Exhibit B must be executed.
4. The promoter/sponsor must provide an Irrevocable Letter of Credit ("LOC"), the original of which will be retained by University, that:
 - a. Is on the University's standard approved LOC template, attached hereto as Exhibit C.
 - b. Is from a lending institution acceptable to University at University's sole discretion.
 - c. Is on the lending institution's letterhead with a bank seal and on bank safety paper.
 - d. Is accompanied by a notarized certification letter indicating that the bank official who signed the LOC is authorized to do so and affirming the authenticity of his/her signature.
5. PAC may only have one cash advance/LOC outstanding at any time.
6. Cash advances are capped at the lesser of:
 - a. The projected PAC income from the performance at issue; or
 - b. The current PAC operating reserve balance.
7. Commercially sponsored/promoted PAC events may not compete or conflict with scheduled Cal Poly Arts events, and in such cases, Cal Poly Arts will have scheduling priority.
8. University may charge the promoter/sponsor an administrative charge.
9. Any cash advance will be made by University in its sole discretion after evaluation of financial stability of and past experiences with promoter/sponsor, bank issuing LOC, and other risk/financial considerations.
10. Any University cash advance given to a promoter/sponsor should not be construed as a guaranty of cash advances to the promoter/sponsor in the future.
11. Sponsor/promoter to repay cash advance on a date determined by University but in no event later than the date of the event set forth in the License Agreement.
12. University reserves its right to amend or cancel this policy with or without notice at any time.

EXHIBIT A

Commercial Promoter/Sponsor Cash Advance Request Application

Event: _____

- Date(s) of Event: _____

Venue: _____

- Is there a fully executed license agreement with University?

Yes: _____ (please attach copy) No: _____

Cash Advance amount requested? \$_____

- To be repaid by _____ (date must be no later than the event date set forth in the License Agreement and may be earlier at University's sole discretion)
- To be repaid in what manner? _____

Name of Lending Institution to provide Irrevocable Letter of Credit:

EXHIBIT B

[University reserves the right to amend this template at its sole discretion on a case by case basis.]

RIDER TO LICENSE AGREEMENT

This is a rider to the License Agreement dated _____ made and entered into this _____ day of _____, 200__, by and between the Trustees of the California State University, through the President of California Polytechnic State University, San Luis Obispo, (hereinafter collectively referred to as "University"), and the undersigned Licensee for the following event:

Event: _____

- Date(s) of Event: _____

Venue: _____

In exchange for \$_____, University agrees to advance cash to Licensee in the amount of \$ _____ to be repaid no later than (*insert the day before the event*) _____ by (*insert manner of repayment*) _____.

University's obligation to advance cash is contingent on Licensee obtaining an Irrevocable Letter of Credit pursuant to the instructions and in the exact form of the Letter of Credit template attached hereto (*attach current instructions and LOC- Ex. C to this Policy*). Licensee further agrees that if Licensee fails to repay University by (*insert date before event*) _____, University may tender the Letter of Credit in accordance with its terms and/or immediately draw on the settlement monies held by University up to the cash amount advanced.

In concurrence and witness whereof, this rider has been executed by the parties effective on the date and year first above written.

AGREED TO AND ACCEPTED:

For: California Polytechnic State University

By: _____ **Date:** _____
Signature

Title: _____

For: (*insert name of Licensee*) _____

By: _____ **Date:** _____
Signature

Title: _____

EXHIBIT C

Instructions:

- Lending institution issuing LOC must be acceptable to Cal Poly
 - Must be on bank letterhead with bank seal
 - Must be on bank’s safety paper
 - Cal Poly retains the original LOC
- LOC must be accompanied by a notarized certification letter indicating that bank official who signed LOC is authorized to do so and affirming authenticity of his/her signature.
 - This LOC’s content may not be modified or altered in any manner

IRREVOCABLE LETTER OF CREDIT
[BANK NAME AND ADDRESS]

DATE: _____

TO: CALIFORNIA POLYTECHNIC STATE UNIVERSITY
SAN LUIS OBISPO, CA 93407

LETTER OF CREDIT NO.: _____

AMOUNT: \$_____.00 (**_____ Dollars**)

At the request of our customer, *[Insert Name of Promoter]* _____ (“_____”), *[Insert Name of Bank]* (“Institution”) hereby issues an Irrevocable Letter of Credit (“Letter of Credit”) in favor of California Polytechnic State University, a California State agency (“Cal Poly”), for the account of *[Insert Name of Promoter]* _____, available by sight drafts drawn on the Institution for a sum not exceeding the total amount of _____ Dollars (\$_____.00).

This Letter of Credit is issued to secure *[Insert Name of Promoter]* _____’s obligation to repay a cash advance by Cal Poly to *[Insert Name of Promoter]* _____ in the amount of _____ Dollars (\$_____.00) for use in *[Insert Name of Promoter]* _____’s promotion of the *[Insert name of event]* _____ performance on *[Insert date]* _____ at the *[Insert name of facility licensed]* _____ in San Luis Obispo, California.

A drawing under this Letter of Credit shall be made by Cal Poly presenting to Institution this Letter of Credit, and a demand in writing signed by a person duly authorized to sign on Cal Poly’s behalf.

Said demand shall refer to this Letter of Credit by the above number, shall state the amount demanded and shall certify one of the following:

1. *[Insert Name of Promoter]* _____ has failed to secure the performance of *[Insert Name of Event]* _____ at the *[Insert Name of facility licensed]* _____ in San Luis Obispo, California on *[Insert date]* _____; or
2. *[Insert Name of Promoter]* _____ has failed to repay the _____ Dollars (\$_____.00) cash advance made by Cal Poly to *[Insert Name of Promoter]* _____ either in whole or in part on or before the due date of *[Insert date]* _____.

(the “Demand”).

Upon Institution's receipt of this Letter of Credit and Demand, Institution will pay Cal Poly the amount stated in the Demand without inquiring whether Cal Poly has a right to make such Demand and without recognizing any claim of Institution's customer, *[Insert Name of Promoter]* _____ . Institution agrees that the Letter of Credit proceeds shall be paid without deduction, set-off or counter claim, and any banking charge(s) is for the account of *[Insert Name of Promoter]* _____ and will not be deducted from the proceeds. The amount stated in the Demand to be payable to Cal Poly will not exceed _____ United States Dollars (\$ _____ .00) and the Demand must be presented prior to the Expiration Date (defined below).

This Letter of Credit will expire on *[Insert date six months after date of event]* ("Expiration Date").

Partial drawings under this Letter of Credit are permitted.

BANK SEAL

Print name and title of authorized bank official*

***By separate letter accompanying this Letter of Credit, Institution has certified the authenticity of the officer's signature and the authority of the officer.**