



**MONTCLAIR STATE
UNIVERSITY**

University Counsel

973-655-5225

Fax: 973-655-7719

July 11, 2023

File upload: <https://www.muckrock.com/respond/1526273>

Anne Marie Tamburro
MuckRock News
DEPT MR 146659
263 Huntington Avenue
Boston, MA 02115

RE: OPRA Request to Montclair State University: Institutional Press Policies

Dear Ms. Tamburro:

Montclair State University received your Open Public Records Act (OPRA) request on July 10th, 2023. As such, the seven (7) business day deadline to respond to your request is July 20th, 2023. This response to your request is being provided to you on the 1st business day after the custodian's receipt of said request. You requested policy, guidance, handbook, manual or standard contract concerning institution interactions or communications of employees and students with news media.. In response to your request, we are attaching a copy of a fully-executed agreement relating to the University's Student Newspapers as well as the below links:

[Academic Freedom – Policies And Procedures - Montclair State University](#)
[Policy On News Media Relations – Policies And Procedures - Montclair State University](#)
[University Communications And Marketing - Montclair State University](#)
[Code Of Conduct – Policies And Procedures - Montclair State University](#)
[Communication And Media Studies – School Of Communication And Media - Montclair State University](#)
[Journalism And Digital Media – School Of Communication And Media - Montclair State University](#)

We trust this is of assistance to you.

Sincerely,

Maria C. Anderson

Maria C. Anderson
Deputy University Counsel

11/6/08

AGREEMENT - STUDENT NEWSPAPER

This Agreement ("Agreement") is entered into as of October 29, 2008 (the "Effective Date"), between MONTCLAIR STATE UNIVERSITY ("University"), a public higher education institution formed under the laws of the State of New Jersey with an address at 1 Normal Avenue, Montclair, New Jersey, and The Montelican Publishing, Inc. ("Company"), a not-for-profit entity with an address at Student Center Annex, Room #113, One Normal Avenue, Montclair, NJ 07043.

WHEREAS, a student newspaper has been circulated to and within the University since in or about 1926 known as the The Pelican and subsequently The Montclarion by the University's Student Government Association ("SGA"),

WHEREAS, the Company desires to write and circulate The Montclarion for the benefit of the University community without involvement by the SGA and the University is willing to assess fees to students ("Fees") on behalf of the Company and remit those Fees for such services;

NOW THEREFORE, the University and the Company agree as follows:

1. **TERM OF AGREEMENT.** The term of the agreement shall be one year ("Term") commencing on the date the Agreement is signed by all parties. At the expiration of the Term, the Agreement may be renewed, in the sole and unfettered discretion of the University, for additional one year periods ("Renewal Term(s)"). The Company shall submit a written notice to the University ninety (90) days prior to the expiration of the Term inquiring whether the University intends to renew the Agreement, and the University must act in good faith to respond to the Company within the sixty (60) days prior to the expiration of the Term. Either party may terminate the Agreement prior to the expiration of the Term if materially breached by the other as that term is defined in the Agreement. In the event this Agreement is terminated by the University, the University shall have no further obligation to remit Fees to the Company, the Company shall return all Equipment and Supplies owned by the University to the University.

2. **FEES.** The University shall collect Fees in the amount of \$3.80 per undergraduate and graduate student per semester for the academic year during the Term. The Fees shall be collected by the University from its students and shall be turned over to the Company based on the following schedule:

On or about September 1st and December 1st – An amount equal to 40% of the estimated total Fees for the upcoming semester.

On or about September 30th and January 15th – Additional sums for the upcoming semester that will aggregate with the sums already remitted to a total amount equal to 85% of the Fees.

On or about November 30 and March 31st – The balance of the Fees for the upcoming semester less the Loan payment due the University as per section 6 below.

In the event the amounts that have been remitted by the University exceed the estimated Fees to be paid to the Company as detailed in the above schedule, the Company shall pay the deficit to the University within 30 days of notice of such deficiency by the University. The University shall act in good faith to provide such notice to the Company within forty-five (45) days after such funds have been remitted.

3. **AUDIT.** Within 120 days after the Company's fiscal year end, the Company shall provide an audit of its financial operations and position by an independent public accountant in accordance with generally accepted auditing standards. Upon completion of said audit and presentation of the financial statements and any letter to management prepared by the Company's independent auditors, the Company's executive officer and chief financial officer, along with the representatives from the independent public accounting firm, will meet with the University's Board of Trustees' Audit and Finance Committee.

4. **OBLIGATIONS OF THE COMPANY.** Company agrees to write, publish, and circulate a newspaper for distribution within the University's campus and to the University's students in paper form and by way of electronic media ("Newspaper") in exchange for the Fees. Company agrees that its staff shall be comprised solely of the undergraduate and/or graduate students of the University. Company shall publish no less than twelve (12) issues of the Newspaper per semester and shall distribute the Newspaper on Thursdays during each month of the University's semesters. The Company shall comply with the Code of Ethics for the Society of Professional Journalists and ensure that the Newspaper complies with prevailing First Amendment law. The sole exception shall be that the Newspaper shall not publish any photograph which is legally obscene under prevailing case law. The Company shall pay the wages and any benefits provided for no more than two (2) full-time employees or consultants, the selection of which shall be subject to the sole discretion of the Company, to fulfill the functions of advertising and bookkeeping for the Company. The Company shall not charge a fee for the Newspaper and the Company shall be permitted to use the Fees solely for the expenses directly associated with publication of the Newspaper.

5. **OBLIGATIONS OF THE UNIVERSITY.** In addition to the Fees, the University shall provide appropriate space to the Company, the location and size to be selected by the University which must be reasonably sufficient for the running of the newspaper. In the event this Agreement is terminated and/or not renewed, such office space shall nevertheless continue to be provided to Company at the University's then prevailing rental rates subject to its availability for a non-University function. In addition, the Company shall execute a loan agreement with the University to finance the purchase of appropriate computers, software, furniture, equipment and office supplies ("Equipment and Supplies") and excess liability insurance for the Company. Upon the Company's request, the University shall pay, on behalf of the Company, the wages for the Company's two (2) full-time employees for a period of time mutually agreeable to the University and Company, and the University shall be reimbursed such costs from the Fees. The University shall also be reimbursed by the Company for the costs of the Equipment and Supplies from the Fees as set forth in paragraph 2.

6. **LOAN TO COMPANY.** The University and the Company shall execute a Loan Agreement to memorialize the terms of the Company's repayment of the purchase of Equipment

and Supplies by the University. The Loan shall have a term of no more than five years and shall be payable in five (5) equal annual installments with the first payment being due on March 31st following the date of this Agreement and continuing every March 31st thereafter until the Loan is repaid in full. In the event of termination and/or nonrenewal of this Agreement, the Company shall continue to have the exclusive and unfettered right to utilize the Equipment and Supplies, which may be removed from the University's campus in the Company's sole discretion, so long as the Company has fully satisfied the payments required by the Loan Agreement.. Title shall remain in the University until the loan is repaid in full. In the event Company fails to make any Loan payment when due, University shall provide to the Company with an opportunity to cure as set forth below. If the breach is not cured, then it may terminate this Agreement upon written notice and take possession of the Equipment and Supplies. All loan payments shall be deducted by the University from the Fees due to the Company in accordance with paragraph 2.

7. **EVENTS OF DEFAULT AND OPPORTUNITY TO CURE.** The following events shall be deemed a material breach of the Agreement ("Event of Default"): (a) Company's failure to deliver the audit required by paragraph 3; (b) Company's failure to publish two consecutive issues of the Newspaper; (c) the charging of any fee by the Company for the Newspaper; (d) Company's failure to make any payment required by the Loan Agreement; (e) University's failure to provide the space, Equipment and Supplies to the Company as required by paragraph 5; (f) Company assigns or sublicenses the license granted by the University pursuant to paragraph 7 (g) Company breaches the rules of conduct set forth in paragraph 11; (h) Company fails to provide the insurance required by paragraph 13, or (i) University fails to remit the Fees when due.

In the Event of Default, the non-defaulting party must send written notice to the defaulting party describing the Event of Default and provide thirty (30) days after receipt of said notice to cure the Event of Default. If the party declaring the Event of Default nevertheless believes that the Event of Default has not been cured thereafter, it must provide a second notice to the defaulting party explaining why the Event of Default has not been cured and provide a five (5) day period after receipt of that notice to cure the Event of Default. In the event that the Event of Default has not been cured prior to the expiration of that five (5) day period, the non-defaulting party may terminate the Agreement without further notice. Any notices required by this paragraph or elsewhere in the Agreement may be sent by certified mail, facsimile with confirmation of receipt, or overnight delivery, shall be effective on the date received and should be provided to the following addresses:

To Company:
Montelican Publishing, Inc.
Student Center Annex, Room #113
One Normal Avenue, Montclair, NJ 07043

To University:
Montclair State University
One Normal Avenue
Montclair, NJ 07043
Attention: Dr. Karen Pennington, Vice President of Student Affairs

Donald D. Cipullo, Vice President of Finance and Treasurer
Valerie Van Baaren, University Counsel

8. **LICENSE GRANTED TO COMPANY.** The University has filed a trademark application for the name "The Montclarion". The Company recognizes that the University owns all right, title and interest to, including all trademark rights and other intellectual property rights in, The Montclarion. Subject to the terms and conditions of this Agreement, subject to the Term of the Agreement having not expired or been earlier terminated, and subject to the Company not having materially breached the Agreement, University grants to the Company an exclusive, non-transferable, irrevocable license during the Term of the Agreement, and any Renewal Term, to use The Montclarion to identify the Newspaper in the form of print or electronic media. The University expressly reserves all rights to The Montclarion not specifically granted to the Company by way of license in this Agreement. The Company shall not engage in any act or omission that would impair the University's and/or its licensor's intellectual property rights in The Montclarion and any other materials, information, processes or subject matter proprietary to the University.

9. **OWNERSHIP OF CONTENT IN THE NEWSPAPER.** The Company must own the rights to the content in the Newspaper. If Company does not exclusively own all of these rights, the Company must obtain all necessary written authorizations and licenses from the owner(s) of the content published in the Newspaper. The Company represents, warrants and covenants to the University that publication of any materials in the Newspaper will not violate this Agreement, any rights of any other party, any law or regulation or infringe upon or misappropriate any intellectual property, privacy, publicity or other rights of any party. Upon the request of the University, the Company will furnish any documentation and releases necessary to verify the Company's compliance with the terms and conditions of this Agreement, including, without limitation, the foregoing representations, warranties and covenants.

10. **USE OF CONTENT.** The Company shall own the content generated by the Company in the Newspaper ("Content") in regard to The Montclarion in any format or venue whatsoever. However, upon reasonable notice to the Company, the University may use, reproduce and/or duplicate the Content on the condition that the University incorporate an express written statement when using, reproducing and/or duplicating the Content that would make third parties aware that the Content was generated by the Company and not the University. Furthermore, in using, reproducing and/or duplicating the Content, the University specifically agrees not to make any representations or statements to third parties that would reasonably make them believe that the University is the owner and/or author of the Content.

11. **ADVERTISING.** The Company shall be permitted to display advertisements in the Newspaper for products or services in its sole discretion, so long as it complies with the University's Code of Conduct.

12. **RULES OF CONDUCT.** In addition to compliance with the Code of Ethics of the Society of Professional Journalists, the Company shall comply with the University's Code of

Conduct, the University's Guidelines for Responsible Computing, the University's Statement on Equal Opportunity, Affirmative Action and Tolerance, and all applicable local, state, national laws and regulations and, international treaties. Company is solely responsible for all activities, acts and omissions that occur in, from, through or under its performance of the Agreement. Company shall not use, allow, or enable others to use the Newspaper, or knowingly condone use of the Newspaper by others, in the specific manner set forth below:

- be libelous or defamatory, or any photograph which is legally obscene under prevailing First Amendment and other case law
- with the exception of the Fees and advertising contained within the Newspaper, be used for commercial or business purposes to generate fees; and
- violate any intellectual property rights.

13. **DISCLAIMER AND LIMITATIONS OF LIABILITY.** THE EQUIPMENT AND SERVICES PROVIDED BY THE UNIVERSITY ARE MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OR ANY GUARANTY OR ASSURANCE THEY WILL BE AVAILABLE FOR USE, OR PERFORM AS DESCRIBED. Company understands, acknowledges and agrees that it is assuming the entire risk as to the quality, accuracy, performance, timeliness, adequacy, completeness, correctness, authenticity, security and validity of the Equipment and Services provided by the University.

COMPANY UNDERSTANDS AND AGREES THAT, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE UNIVERSITY, STATE OF NEW JERSEY, EDUCATIONAL FACILITIES AUTHORITY, OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, LICENSORS, OR SUPPLIERS, SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, OF ANY KIND, DIRECT OR INDIRECT, IN CONNECTION WITH OR ARISING FROM THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.

14. **INDEMNIFICATION AND INSURANCE**

The Company, its subcontractors and agents, shall secure and maintain in force for the term of the Agreement, the following insurance coverage with the following minimum limits upon terms that are acceptable to **Donald D. Cipullo, Vice President for Finance and Treasurer, Montclair State University, 855 Valley Road, Suite 112, Clifton, NJ 07013.** All insurance required herein, except Workers' Compensation, shall name Montclair State University, the Educational Facilities Authority, and the State of New Jersey as additional insureds.

Insurance	Combined Single Limit	Aggregate Limit
Commercial General Liability	\$1 million	\$2 million
Automobile	\$1 million	\$1 million

Worker's Compensation	As required by NJ law	As required by NJ law
Excess Liability	\$5 million	\$5 million
Publisher's and Broadcaster's	\$1 million	\$2 million

The University, the Educational Facilities Authority, and the State of New Jersey shall be named as additional insured and the Company shall provide copies of certificates of insurance to the University upon request.

The Company shall assume all risk of and responsibility for, and agrees to defend, indemnify and hold harmless the University, the Educational Facilities Authority, and the State of New Jersey, including their trustees, officers, employees, volunteers and agents from and against any and all claims, demands, suits, actions, judgments, costs and expenses (including reasonable attorney's fees) on account of any claim which arises from or results directly or indirectly from the Company's operations, performance of the Agreement, and its use of the University premises under this Agreement, except for such claims, demands, suits, actions, recoveries, judgments that result from the intentional or solely negligent acts or omissions of the University. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.

The University reserves the right but not the obligation to assume, at its sole expense, the exclusive defense and control of any such claim or action and all negotiations for settlement or compromise, and Company agrees to fully cooperate with the University in the defense of any such claim, action, settlement or compromise negotiations, as requested by the University. If the Company fails to meet these requirements, the University may procure or renew such insurance and pay any and all premiums in connection therewith and offset the cost of the premiums against the Fees due to the Company.

15. **MISCELLANEOUS.** This Agreement contains the entire understanding and agreement between the parties and supersedes any and all prior or inconsistent understandings. This Agreement may only be changed by written agreement signed by both the University and the Company. If any provision of this Agreement is held to be illegal, invalid or unenforceable, this will not affect any other provisions and the Agreement will be deemed amended to the extent necessary to make it legal, valid and enforceable.

16. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and so long as each of the parties have executed at least one of such counterparts, each executed counterpart shall constitute an original and this Agreement shall be binding as between the parties.

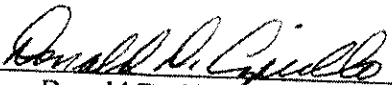
17. **FACSIMILE/IMAGED SIGNATURES.** A facsimile or imaged signature on this Agreement shall be deemed to be an original signature for all purposes. In the event that a suit or a proceeding is brought to enforce the terms of this Agreement, the movant shall not be required to produce or introduce into evidence a copy of this Agreement bearing original inked signatures of the parties. A facsimile or imaged signature on this Agreement shall suffice in any legal proceeding or action to enforce the terms of this Agreement.

This Agreement is governed by, construed and enforced in accordance with the substantive laws of the State of New Jersey (notwithstanding the State's conflict of laws provisions).

Agreed and accepted by:

Montclair State University

The Montelican Publishing, Inc.

By: 
Donald D. Cipullo
Vice President for Finance
and Treasurer

By: 