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*Attorneys for Plaintiff UTOPIA*

FILED  
THIRD DISTRICT COURT  
11 APR 18 PM 2: 58  
SALT LAKE DEPARTMENT  
BY \_\_\_\_\_  
DEPUTY CLERK

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IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

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UTAH TELECOMMUNICATION OPEN )  
INFRASTRUCTURE AGENCY, )

Plaintiff, )

v. )

CHRIS HOGAN, )

Defendant. )

**VERIFIED COMPLAINT**

Civil No. 110909414

Judge Fratu

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The plaintiff Utah Telecommunication Open Infrastructure Agency (“UTOPIA”), through counsel, for its Complaint against the defendant Chris Hogan (“Hogan”), states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. UTOPIA is an interlocal cooperative entity and political subdivision of the State of Utah composed of sixteen Utah cities.

2. Hogan is an individual residing in the State of Colorado.

3. This Court has subject matter jurisdiction over this action pursuant to Utah Code Ann. § 78A-5-102(1).

4. This Court has personal jurisdiction over Hogan pursuant to Utah Code Ann. § 78B-3-205(1), (2) and (3), and section 7.6 of the parties' Agreement.

5. Venue is proper in this Court pursuant to Utah Code Ann. § 78B-3-304(2) and - 307, and section 7.6 of the parties' Agreement.

#### **GENERAL ALLEGATIONS**

6. On May 12, 2009, UTOPIA and Hogan entered into an Agreement for Professional Services (the "Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit A.

7. Pursuant to the Agreement, UTOPIA retained the services of Hogan as a consultant for a period of twenty-four (24) months, or until May 12, 2011.

8. The term "Services" was defined in Section 1.1(a) of the Agreement as responsibility "for all sales, marketing, business development, operations, IT, and engineering efforts regarding the UTOPIA network."

9. The Agreement provided in Article IV: "Consultant understands that the Services performed for UTOPIA are confidential and Consultant agrees to maintain such confidentiality. This ARTICLE IV. shall survive the termination of the Agreement."

10. On March 17, 2011, UTOPIA gave Hogan verbal notice that the Agreement would expire and terminate on May 12, 2011.

11. On March 21, 2011, after the verbal notice of expiration of the Agreement,

Hogan's counsel sent to UTOPIA a letter with an attached draft complaint. Counsel threatened to file the complaint unless Hogan were reinstated and there were "discussion of who would direct UTOPIA forward." A true and correct copy of the March 21, 2011, letter and draft complaint are attached as Exhibit B.

12. The draft complaint largely voices dissatisfaction with the management and direction of UTOPIA in its "General Allegations," matters as to which Hogan has no claim or cause of action and matters as to which the Agreement bound him to confidentiality.

13. The four causes of action in the draft complaint each purport to sound in contract or quasi-contract but have as their central purpose to force UTOPIA to extend the Agreement beyond its two-year term and to recover amounts under the Agreement that UTOPIA had already indicated it would pay.

14. On March 24, 2011, UTOPIA confirmed its previous verbal notice of expiration by delivering a written "Notice of Expiration of Professional Services Agreement." A true and correct copy of this Notice is attached as Exhibit C.

15. The Notice of Expiration had as its purpose, in part, to respond to the March 21, 2011, letter of Hogan's counsel.

16. On March 24, 2011, counsel for Hogan sent to UTOPIA a second letter expressly threatening that, unless UTOPIA met certain demands, including payment of over \$200,000, Hogan would file the lawsuit to include allegations of wrongdoing that would invite "public scrutiny" while overtly admitting that such "public scrutiny . . . threatens to destroy the work of UTOPIA." A true and correct copy of the March 24, 2011, letter is attached as Exhibit D.

17. The letter conditioned Hogan's willingness to keep quiet about the supposed

damaging information obtained by him in the course of the service he provided under the Agreement on several extravagant demands, none of which are afforded Hogan in the Agreement:

- a. "Mr. Hogan demands the opportunity to speak freely, outside of the presence of Todd Marriott ("Marriott"), with UTOPIA's Executive Board."
- b. "UTOPIA must pay Mr. Hogan \$161,000 for his expectation damages of employment for the next fourteen months."
- c. "UTOPIA must pay Mr. Hogan \$28,000 for the value of the use of an apartment as part of his employment contract."
- d. "UTOPIA must pay Mr. Hogan \$20,000 for punitive damages. . . ."
- e. "UTOPIA must pay Mr. Hogan's legal fees of \$10,000.00."

18. The March 24, 2011, letter offers no legal basis for these demands but instead, as in the draft complaint, recounts at length Hogan's perception of deficiencies in the leadership of UTOPIA's executive director and makes it clear that Hogan intends to file the draft complaint and publicize these perceived deficiencies if his demands are not met.

19. In response to Hogan's threats and ultimatum, UTOPIA sent a letter dated April 4, 2011, stating that it would not submit to blackmail or extortion. This letter noted that Hogan failed to recite any legal basis for demanding the various concessions set forth in the March 24, 2011 letter. A true and correct copy of the April 4, 2011, letter is attached as Exhibit E.

20. In the April 4, 2011, letter, UTOPIA made specific reference to the confidentiality provision found in Article IV of the Agreement and demanded written assurances that Hogan would abide by this confidentiality provision in the Agreement.

21. Hogan has failed to provide such written assurances. Rather, most recently, Hogan's counsel sent a letter dated April 11, 2011, contending that Hogan's earlier demands

were “to vindicate Mr. Hogan’s rights while shielding UTOPIA from public scrutiny.” A true and correct copy of the April 11, 2011, letter is attached as Exhibit F.

22. In the April 11, 2011, letter, Hogan again recounts at length his various grievances with UTOPIA’s executive director and then contends that “[f]iling a lawsuit will protect the public trust by exposing what [Hogan] believes is mismanagement.”

23. Hogan lays bare his motive in making broad and unwarranted demands when he concedes:

[O]wing to the public’s already precarious public opinion of UTOPIA, Mr. Hogan fears that a lawsuit will destroy any faith that the public has in UTOPIA. He is aware that the media tracks legal filings. If the media, which has already been critical of UTOPIA, learns of the lawsuit, it will recommence its assault on UTOPIA. Such an assault would likely destroy public faith in UTOPIA. Without public faith, UTOPIA will not receive public funding. Without public funding, UTOPIA will fail.

24. In the letter, Hogan disregards UTOPIA’s earlier assertion that he is bound by the confidentiality provision in the Agreement but rather argues that UTOPIA has “violated his First Amendment rights.”

#### **FIRST CAUSE OF ACTION (Specific Performance)**

25. UTOPIA incorporates by reference each and every allegation set forth above in paragraphs 1 through 24.

26. Hogan has threatened to violate the confidentiality requirements of the Agreement if he is not granted certain concessions and payments to which he would not otherwise be entitled under the terms of the Agreement.

27. By his own admission and in very fact, if Hogan violates the confidentiality provisions of the Agreement and discloses information that he obtained only by virtue of

providing services under the Agreement, the disclosure of that information, whether true or not true, will cause UTOPIA irreparable harm.

28. It is only by reason of Hogan's conviction that the potential harm to UTOPIA is substantial and irreparable that he makes the overreaching demands set forth in his letters of March 24 and April 4, 2011.

29. Hogan's threatened disclosure of information obtained during the course of services he provided to UTOPIA pursuant to the Agreement is in violation of the Agreement.

30. This threat of wrongful disclosure serves Hogan only as a means to obtain concessions and benefits from UTOPIA to which Hogan is not entitled.

31. UTOPIA is entitled to a temporary restraining order and preliminary and permanent injunction to specifically enforce the confidentiality provision of the Agreement and prohibit Hogan from disclosing any information obtained during the course of rendering services under the Agreement.

### **SECOND CAUSE OF ACTION (Declaratory Relief)**

32. UTOPIA incorporates by reference each and every allegation set forth above in paragraphs 1 through 31.

33. Hogan claims that UTOPIA has a legal duty to renew the Agreement for a further year and to compensate him above and beyond that compensation specified in the Agreement.

34. The Agreement is the sole source of any legal duty that UTOPIA owes to Hogan with respect to the services provided by Hogan to UTOPIA.

35. The Agreement expires, by its own terms, on May 13, 2011.

36. UTOPIA is entitled to an order of this Court declaring that (a) the Agreement expires on May 13, 2011, (b) UTOPIA has no legal duty to renew the Agreement, (c) UTOPIA has no legal duty to compensate above and beyond that compensation specified in the Agreement, and (d) UTOPIA owes no other legal duty to Hogan with respect to the services provided by Hogan to UTOPIA.

**RELIEF**

WHEREFORE, UTOPIA demands Judgment against Hogan as follows:

A. A temporary restraining order and preliminary and permanent injunction prohibiting Hogan from disclosing any information obtained during the course of rendering services under the Agreement.

B. A declaration that (a) the Agreement expires on May 13, 2011, (b) UTOPIA has no legal duty to renew the Agreement, (c) UTOPIA has no legal duty to compensate above and beyond that compensation specified in the Agreement, and (d) UTOPIA owes no other legal duty to Hogan with respect to the services provided by Hogan to UTOPIA.

C. Award of UTOPIA's attorney fees and costs incurred in bringing this action.

D. Such further relief, legal and equitable, as the Court may deem proper.

DATED this 18<sup>th</sup> day of April, 2011.

KIRTON & McCONKIE



Eric C. Olson

Stephen W. Geary

Attorney for Plaintiff UTOPIA

Plaintiff's Address

2175 S. Redwood Road  
West Valley City, UT 84119

VERIFICATION

STATE OF UTAH                    )  
  : ss  
COUNTY OF SALT LAKE        )

Kirt Sudweeks, being first duly sworn and under oath, deposes and says that he is the Chief Financial Officer of the Utah Telecommunication Open Infrastructure Agency Plaintiff in the above-entitled action; that he has read the foregoing VERIFIED COMPLAINT, and understands the contents thereof, and the same is true of his own knowledge, information and belief.

DATED this 18<sup>TH</sup> day of April, 2011.

  
\_\_\_\_\_  
Kirt Sudweeks, CFO

SUBSCRIBED AND SWORN TO before me this 18 day of April, 2011.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Salt Lake County, Utah

4847-6614-7849, v. 1





# **EXHIBIT A**

**AGREEMENT**  
for  
**PROFESSIONAL SERVICES**  
between  
**UTOPIA**  
and  
**Chris Hogan, Consultant**

This Agreement is made as of the 12 day of May, 2009 (the "Effective Date"), between the Utah Telecommunication Open Infrastructure Agency, an interlocal cooperative agency organized under the laws of the State of Utah ("UTOPIA"), and Christopher Hogan, Consultant.

**RECITALS:**

WHEREAS, UTOPIA is in need of professional services (the "Services") as further defined herein; and

WHEREAS, Consultant has substantial experience performing services similar to those required by this Agreement; and

WHEREAS, pursuant to UTOPIA's Procurement Policy no informal or formal procurement process is required to procure Consultant's Services; and

WHEREAS, UTOPIA wants to retain the Consultant's Services, and Consultant is willing to perform the Services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

**AGREEMENT:**

ARTICLE I. SCOPE OF WORK

Section 1.1. Services

Consultant shall perform the following services ("Services"):

- (a) Generally, Consultant shall be responsible for all sales, marketing, business development, operations, IT, and engineering efforts regarding the UTOPIA network.

Section 1.2. Compensation

Compensation is as outlined in Exhibit A – “Statement of Work”

ARTICLE II. UTOPIA will compensate Consultant for the Services as set forth.

Section 2.1. Payment

UTOPIA will pay Consultant all undisputed invoiced amounts within thirty (30) days of UTOPIA’s receipt of invoice. In the event UTOPIA disputes any invoiced amounts, the parties will work expeditiously to resolve such dispute, whereupon UTOPIA will pay Consultant as agreed upon in such resolution. Late payments on undisputed invoices will be subject to a 1% per month late fee.

ARTICLE III. TERM AND TERMINATION

This Agreement will be deemed commenced as of the Effective Date and will continue for twelve (24) months.

ARTICLE IV. CONFIDENTIALITY

Consultant understands that the Services performed for UTOPIA are confidential and Consultant agrees to maintain such confidentiality. This ARTICLE IV. shall survive the termination of this Agreement.

ARTICLE V. OWNERSHIP OF DOCUMENTS

All documents, notes, work papers, formulas, files, research, maps, and other records, whether in hard copy, electronic or any other format (“Records”), and all rights pertaining thereto of any kind, produced by or in Consultant’s possession in connection with this Agreement, without limitation, shall become and remain UTOPIA’s property. UTOPIA shall have the right to use such Records without restriction or limitation and without further compensation to Consultant. All Records created by Consultant shall constitute “works for hire” under U.S. Copyright laws and UTOPIA shall retain all rights associated therewith. This ARTICLE V. shall survive the termination of this Agreement.

ARTICLE VI. REPRESENTATIONS, INDEMNIFICATION

Section 6.1. Representations.

Consultant represents and warrants that Consultant is free to enter into this Agreement and that Consultant is under no disability, restriction, or prohibition that will interfere in any manner with Consultant's full compliance with and performance under this Agreement. Consultant warrants that Services will be of good quality and to the reasonable satisfaction of UTOPIA. Consultant also warrants and represents that no Services provided to the UTOPIA hereunder will infringe or violate any right of any person or firm and that UTOPIA may exploit such Services provided hereunder without liability or obligation to any person or firm.

Section 6.2. Indemnification.

Consultant agrees to indemnify, hold harmless and (at Indemnitee's option) defend UTOPIA, its member municipalities and each of their employees, officers, directors, contractors, representatives, employees, agents, insurers, attorneys, successors and assigns (the "Indemnitees") for, from and against any and all claims, causes of action, damages (including, without limitation, all foreseeable and unforeseeable consequential damages, injunction and other relief), fines, judgments, penalties, costs, liabilities, losses or expenses (including, without limitation, experts' and consultants' costs, attorneys' fees and reasonable investigative and discovery costs) arising prior to, during or after the term of this Agreement on account of or in connection with, or directly or indirectly related to: (i) the acts or omissions of the Consultant, its agents, servants, employees, contractors, guests and invitees (collectively, the "Consultant's Agents") in the performance of this Agreement or the delivery of any Services; (ii) the violation of law by the Consultant or the Consultant's Agents; (iii) Consultant's untrue representation or warranty; and (iv) the use, reproduction, distribution, sale or other commercialization of Services in violation of rights under any patent, copyright, trademark, or other intellectual property right or application for the same. Consultant's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or earlier termination of this Agreement, as to claims arising or accruing prior to the expiration or earlier termination of this Agreement. Consultant shall not be required to indemnify or defend any Indemnitee against any injury, loss of life, or damage which is caused by the sole negligence or willful misconduct of any Indemnitee.

ARTICLE VII. MISCELLANEOUS PROVISIONS

Section 7.1. Amendments

No modifications, amendments or supplements to this Agreement shall be effective for any purpose unless in writing, signed by each party.

Section 7.2. Conflict of Interest

Consultant covenants that it does not now, nor will it acquire any interest, direct or indirect, which may in any manner conflict with Consultant's performance under this Agreement unless such conflict is waived in writing by UTOPIA in advance.

Section 7.3. Employment Status

Services rendered by Consultant pursuant to this Agreement are not rendered as a UTOPIA employee and amounts paid under this Agreement do not constitute compensation paid to an employee. The parties expressly agree that Consultant is an independent contractor and not an employee of UTOPIA, and as such, Consultant is solely responsible for her own employment taxes, worker's compensation premiums and similar expenses. UTOPIA assumes no liability for Consultant's actions and Consultant agrees to indemnify and hold UTOPIA harmless from and against any third party claims brought as a result of Consultant's Services.

Section 7.4. Assignment of Rights

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation or other entity without the prior, express, and written consent of the other party. Any transfer stock, assets, or any other change in control in the ownership or management of Consultant shall be deemed an assignment hereunder and shall require prior, express, and written consent of UTOPIA.

Section 7.5. Applicable Law

This Agreement and Consultant's obligations and Services hereunder are made and must be performed in compliance with all applicable federal, state, and local laws. The interpretation and enforcement of this Agreement shall be pursuant to the laws of the State of Utah without regard to conflicts of law principles..

Section 7.6. Jurisdiction and Venue

Any dispute arising from or related to this Agreement shall be brought in Third Judicial District Court of Utah, Salt Lake County, if in state court, or the United States District Court of Utah, if in federal court.

Section 7.7. Time is of the Essence

The parties acknowledge and agree that TIME IS OF THE ESSENCE in Consultant's performance of the Services hereunder.

Section 7.8. No Authority to Bind

Consultant expressly acknowledges and agrees that no actions undertaken by Consultant in the performance of the Services with respect to any third parties shall be binding upon UTOPIA except through UTOPIA's express written agreement with such third parties. Consultant covenants and warrants that it will not represent, expressly or impliedly, to any third party that such authority exists. Consultant shall be liable to UTOPIA for any third party obligations which may arise as a result of Consultant's violation of this Section 7.8.

Section 7.9. Severability

In the event that any provision of this Agreement is declared void, invalid or unenforceable by a regulatory agency, tribunal or court of competent jurisdiction, the remainder of the Agreement shall continue in full force and effect as if the offending provision were not contained herein, and the offending provision shall be replaced by a mutually acceptable and valid provision which comes closest to the intention of the parties underlying the offending provision. If the parties cannot reasonably agree on a replacement provision and the offending provision is material to the Agreement, either party may terminate the Agreement upon written Notice to the other party, provided that all obligations of a party which shall have accrued prior to the date of termination shall be fulfilled by the party.

Section 7.10. Arms' Length Negotiation; Attorney Review; Construction

The parties mutually acknowledge that the provisions of this Agreement are the product of arm's-length negotiations with both parties having essentially equal bargaining strength, access to legal representation of its choice and opportunity to determine the language used herein. The provisions of this Agreement shall not be construed for or against either party. The captions and headings of this Agreement are for ease of reference and shall not be deemed to define or limit the scope of any of the terms, covenants, conditions or Agreements contained herein or in any exhibit attached hereto. As used herein, all words in any gender shall be deemed to include the masculine, feminine or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

Section 7.11. Entire Agreement

This Agreement, together with any Statements of Work, exhibits, schedules and purchase orders, constitutes the entire Agreement and understanding of the parties

concerning the subject matter hereof. It supersedes any and all contracts, arrangements, commitments, understandings, dealings, and offers, whether oral or written, heretofore made by the parties with reference to the subject matter hereof.

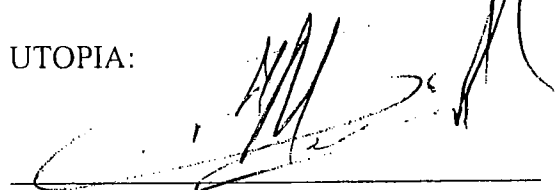
Section 7.12. Non-Waiver

Any failure by either party to exercise any of its rights hereunder shall not be deemed a waiver of any rights or remedies that such party may have, and shall not be deemed a waiver of any subsequent breach or default.

*(Signature Page to Follow)*

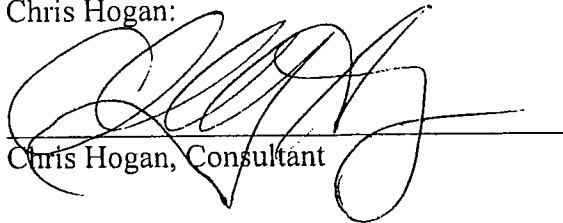
ENTERED INTO as of the Effective Date written above.

UTOPIA:



Todd Marriott, Executive Director

Chris Hogan:



Chris Hogan, Consultant



Exhibit A

# **Statement of Work**

## **Chris Hogan**

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Version 0.0  
May 12, 2009

Presented by:  
Chris Hogan

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## Time and materials

<b>Client name</b>	Utopia
<b>Client's administrator</b>	Todd Marriott
<b>Project name</b>	UTOPIA
<b>Engagement duration</b>	Twenty four (24) months
<b>Begin date</b>	May 15, 2009
<b>End date</b>	May 14, 2011

## Schedule of rates

<b>Item description</b>	<b>Delivery schedule</b>	<b>Cost (monthly)</b>
Consulting Fee	Invoice	\$11,500

## Payment terms

<b>Phase</b>	<b>Completion date</b>	<b>Payments due</b>
Term	May 14, 2011	Monthly

## **Statement of work**

### **Assumptions**

This Statement of Work ("SOW") is made as of May 12, 2009 between Chris Hogan an independent telecommunications consultant having his principal place of business at 3235 Soaring Eagle Lane, Castle Rock, CO 80109 and Utopia with principal offices at 2175 S. Redwood Road, West Valley City, UT 84119 ("Client") (collectively, "Parties"). This project associated with helping Utopia launch its new marketing and business plan will be referred to as 'New Market Strategy'. The purpose of this statement of work is to define the body of work to be performed in helping Utopia develop and successfully implement the New Market Strategy and develop a transition plan to maintain long term sustainability. The initial statement of work is defined as a twelve-month consecutive period. Subsequent statements of work will be defined by Utopia and Chris defined prior to the expiration of the based on an as needed basis and can be either defined as a monthly arrangement or longer if deemed necessary by Utopia. Prior to the expiration of the initial phase both Utopia and Chris Hogan will agree the length of future statements of work.

Chris Hogan will, with an effective date of May 15, 2009, contract directly with Utopia and work under the direct reporting relationship of Todd Marriot, Utopia Executive Director and the Utopia Board of Directors. Chris Hogan will primarily work out of the Utopia offices in Utah.

### **Change management process**

Any changes to the agreed SOW will be agreed in advance of the change implementation by both Utopia and Chris Hogan.

### **Engagement related expenses**

All expenses incurred as a result of this engagement will be submitted for approval by Utopia with all supporting documentation. Expenses relating to the actual New Market Strategy will be considered program expenses and outside of this SOW and defined in the project budget.

## **Professional services agreement**

This SOW will envelope all Marketing and Operational activities related to building and maintaining the growth and development of the UTOPIA organization. Deliverables are defined below but not limited to only these listed - as the plan will evolve over time. This SOW will include any and all deliverables deemed necessary and agreed by Chris and UTOPIA to build and maintain all marketing and operational related activities.

### **Marketing**

- Brand
- Media and Collateral development
- Community Partner Development
- Channel Partners
- Media Plan development and execution
- PR Plan
- Portal Development and Implementation
- Service Provider recruitment and management
- Project Budget
- Sales Development
  - Create a sales strategy for both the residential, business, and long haul categories. Hire and manage the sales/channel teams

### **Operational Development**

- NOC
- Engineering
- IT

### **Organizational development**

### **Business Development**

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## Acceptance and authorization

**IN WITNESS WHEREOF**, the parties hereto each acting with proper authority have executed this Statement of Work, under seal.

Utopia

Full name

*Exec. Director*

Title

Signature

Date

*May 15<sup>th</sup> 2009*

Chris Hogan

Full name

Title

Signature

Date

*May 12, 2009*

# EXHIBIT B

**CT CHRISTENSEN  
THORNTON, PLLC**

136 EAST SOUTH TEMPLE, SUITE 1400 SALT LAKE CITY, UTAH 84111

STEVE S. CHRISTENSEN  
ALSO LICENSED IN CALIFORNIA  
LISA B. THORNTON  
JAYSEN R. OLDROYD  
CRAIG L. PANKRATZ  
SAMUEL J. SORENSEN

OF COUNSEL  
NORMAN H. JACKSON  
JUDGE, UTAH COURT OF APPEALS (RET.)

March 21, 2011

STEVE S. CHRISTENSEN  
ssc@ctlawfirm.net

Kane Loader  
Chair of Executive Committee  
UTOPIA  
2175 South Redwood Road  
West Valley City, UT 84119-1319

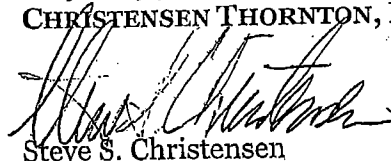
Re: Complaint against UTOPIA

Dear Mr. Loader:

This firm has been retained by Christopher Hogan. I enclose with this letter a copy of a complaint which we are instructed to have filed shortly. Mr. Hogan's first choice would be to have his consulting agreement reinstated and to be able to assist UTOPIA in the short term. Before he can accept that result, there would need to be discussion of who would direct UTOPIA forward.

Alternatively, he is open to settlement discussions. If settlement is an option he will need to know that before the close of business today. I look forward to hearing back from you.

Very truly yours,  
CHRISTENSEN THORNTON, PLLC



Steve S. Christensen

Enclosure  
cc: Davis Shaw

Steve S. Christensen (U.S.B. No. 6156)  
[ssc@ctlawfirm.net](mailto:ssc@ctlawfirm.net)  
Craig L. Pankratz (U.S.B. No. 12194)  
**CHRISTENSEN THORNTON, PLLC**  
136 East South Temple, Suite 1400  
Salt Lake City, Utah 84111-3156  
Telephone: (801) 303-5800  
Facsimile: (801) 322-0594

*Attorneys for Plaintiff Chris Hogan*

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR DISTRICT OF UTAH

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CHRIS HOGAN,

Plaintiff,

vs.

UTAH TELECOMMUNICATION  
INFRASTRUCTURE AGENCY,

Defendant.

**COMPLAINT**

Case No. \_\_\_\_\_  
Judge \_\_\_\_\_

Plaintiff alleges as cause of action against defendants as follows:

**GENERAL ALLEGATIONS**

1. Christopher Hogan ("Hogan") is domiciled in the State of Colorado but has worked Monday through Friday in the State of Utah each week since May 9 2008.
2. That Utah Telecommunication Open Infrastructure Agency, aka UTOPIA, (hereafter "UTOPIA"), an interlocal cooperative agency organized under the laws of the State of Utah, is a quasi governmental entity with its principal place of business in Layton City, Davis County, State of Utah;



3. This court has jurisdiction of this action pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000.00 and the action is between citizens of different States, UTOPIA's citizenship being determined based on its principal place of business.
4. Venue is proper in the United States District Court of the District of Utah.
5. That UTOPIA receives its funding primarily through taxpayer-funded bonds.
6. That UTOPIA must comply with the same Request for Proposal (hereafter RFP) procedures that Utah governmental agencies must comply with when awarding contracts.
7. That UTOPIA is subject to Utah's Governmental Records Access Management Act.
8. Based on information and belief, UTOPIA has been approved by the member cities to secure bond to fund the development of a municipal fiber optic infrastructure ("Municipal Fiber Project" or "MFP") for approximately \$65 Million in the following eight cities: Perry, Payson, Midvale, Murray, Centerville, Layton, Orem, and West Valley City. The cities plan to sell the first one at approximately \$20 Million and that would provide funding for year one of their five year plan. If they hit performance benchmarks, they would be allowed to sell another.
9. Bidding on the MFP was initially planned to be opened for two separate phases, one for mainline construction of the network and the other for fiber drop installs. Hogan was made aware that an initial RFP was posted for respondents for either the mainline construction or fiber drop installs or both parts of the network components. After initial bids were submitted the bidding process was terminated by UTOPIA.

10. UTOPIA then began to prepare a request for new bids to be submitted with the preference of one general contractor to oversee the entire project, rather than to have two phases.
11. On information and belief, UTOPIA has not yet posted this RFP nor awarded the contract for its Municipal Fiber Project.
12. Based on information and belief, Corning, Inc. was planning to submit a bid as a general contractor. Corning has discussed using Tetra Tech a subcontractor under which Tetra Tech would install the curb to home portion of the network.
13. On information and belief, Ryan Marriott is in upper management of Tetra Tech in the Utah region. Ryan Marriott is also a brother to Todd Marriott, UTOPIA's Executive Director ("Director").
14. In order to make sure the bidding process did not jeopardize the success of UTOPIA and in hopes of making the process transparent, Hogan suggested to Jarrod Pantier, UTOPIA's Outside Plant Manager ("Pantier") that he disclose to the Executive Board, the relationship between Tetra Tech and the Director as well as the possibility that Corning may be having discussions with Tetra Tech about awarding the curb to home subcontract to Tetra Tech.
15. That Hogan's motive in speaking with Pantier about the potential conflict of interest was to protect UTOPIA and to prevent UTOPIA from entering into a contract that endangered UTOPIA's continual success and existence.
16. On information and belief, Pantier disclosed to Director the advice Hogan gave to him.

**FIRST CAUSE OF ACTION**  
***(Breach of Contract)***

17. Hogan realleges paragraphs 1 through 16 as though set forth in full hereat.
18. On or about May 9, 2008, a representative of Utah Telecommunication Open Infrastructure Agency, a Utah Agency, hereafter "UTOPIA," offered to enter into a contract with Hogan.
19. UTOPIA offered to pay Hogan \$11,500 per month in exchange for Hogan's services as a Consultant to be responsible for all sales, marketing, business development, operations, IT, and engineering efforts regarding the UTOPIA network.
20. Under the offer, Hogan would work as an independent contractor and not as an employee of UTOPIA.
21. Hogan would work as an independent contractor for UTOPIA for the period of twenty-four (24) months.
22. Hogan accepted UTOPIA's offer.
23. Hogan and UTOPIA memorialized their agreement in a written contract;
24. The written contract was based upon valuable consideration.
25. On or about May 9, 2008, the written contract, hereafter "the contract" was signed by Hogan and Todd Marriott (Director), Dave Shaw (General Counsel), Kirt Sudweeks (CFO), representatives of UTOPIA.
26. In the contract, Hogan and UTOPIA agreed that any dispute arising from or related to the contract would be brought in Third Judicial District Court of Utah, Salt Lake County, if in state court, or the United States District Court of Utah, if in federal court.

27. The contract did not contain a provision that defined when either party could terminate the contract before the expiration of the twenty-four (24) months.
28. On or about March 17, 2011, Todd Marriott unilaterally terminated the contract between Hogan and UTOPIA;
29. Todd Marriott accused Hogan of "insubordination," even though Hogan was an independent contractor and not an employee of UTOPIA.
30. Todd Marriott terminated the contract because of Hogan's alleged insubordination.
31. Hogan had performed all of his obligations as an independent contractor under the contract.
32. UTOPIA's unilateral termination of the contract was without cause.
33. Hogan's consulting agreement should be reinstated.
34. As of March 17, 2011, UTOPIA had not paid the eleven-thousand-five-hundred dollars (\$11,500) it owed to him for his services rendered in the month of February, 2011.
35. As of March 16, 2011, UTOPIA had not paid the five-thousand-seven-hundred-fifty dollars (\$5,750) it owed to him for his services rendered in the month of March up to March 16, 2011.
36. As of March 17, 2011, two months remained under the contract;
37. But for UTOPIA's breach of the contract, Hogan would have received eleven-thousand-five-hundred dollars (\$11,500) each month for the remaining months under the contract.
38. In total, Hogan claims that the company has caused him damages of \$40,250.00 by breaching its contract with him.

**SECOND CAUSE OF ACTION**  
*(Breach of the Covenant of Good Faith and Fair Dealing)*

39. Plaintiff reaffirms, realleges, and incorporates herein paragraphs 1-37 of this Complaint as if set forth in full.
40. Every contract has an implied covenant of good faith and fair dealing.
41. The UTOPIA breached the covenant of good faith and fair dealing when they terminated the contract between them and Hogan and through its actions subsequent to terminating the contract.
42. Director asked Hogan to work directly with Jarrod Pantier (OSP Manager) in preparing the RFP process and he praised the excellence of how well Hogan had recently managed a similar RFP process in securing a marketing ad agency to handle marketing work for UTOPIA for the same growth plan.
43. On information and belief, as a result of the termination of Hogan's consulting agreement, Director has locked Hogan out of his office computer, his company cellular phone and announced his termination to all employees at UTOPIA.
44. Director sent a text on March 18, 2011 to Hogan that stated as follows: "Chris, FYI— under article 4, the services you have performed are confidential and you have agreed to maintain the confidentiality [sic] of the same. Discussion of your internal knowledge of Utopia as result of the Services you have performed with any person or entity is in violation of article 4. You are directed to cease and desist all such activities".
45. On information and belief, Director locked down company offices over the weekend.

46. On information and belief, on March 17, 2011, Gloria Cortes contacted Jan Webb ("Jan"), landlord of the American Towers apartment which UTOPIA leases for Hogan and indicated that UTOPIA would pay through the current lease term and that Hogan can remain in the apartment until the end of the current month when the lease would be terminated.
47. On March 18, 2011, Cortes called Jan a second time and asked Jan to get access card and keys from Hogan and have him vacate the Condo immediately and to remove his personal belongings. Cortes indicated the lease would be terminated as of March 18 and requested written notification of the termination. Jan sent an email to Cortes with the written confirmation of the termination.
48. Within hours of the second telephone call, Hogan spoke with LaVarr. Hogan indicated that since UTOPIA terminated the lease, Hogan would pick up the cost of the unpaid balance personally.
49. Cortes then called Jan Friday evening thanking her for the email of the termination of the lease and for refunding the balance of the lease for the remainder of the lease term. Cortes then asked to be allowed to enter the condo in order to take pictures and prove there was no liability and to prove that Hogan's belongings were gone.
50. LaVarr Webb ("LaVarr") then got on the call and indicated that He and Jan owned the condo and since UTOPIA has already terminated the lease he can do anything he wants with his property.

51. A woman--believed to be Peggy Hathaway based on the name on the caller ID display and also believed to be an attorney--then began to speak and immediately became belligerent with the Webbs, said that Chris cannot stay in the condo and that this was a corporate lease, to which LaVarr said the lease has already been terminated. LaVarr then asked who she was and she said you don't need to know my name.
52. The unidentified woman then informed LaVarr that the phone conversation was being recorded. LaVarr objected to being recorded without his permission and questioned if that was legal. The woman stated it was legal and she could record the call and at that point stated abruptly to LaVarr that she was through with this call and hung up the phone.
53. UTOPIA' actions caused damages to Hogan in an amount to be proven at trial.

**THIRD CAUSE OF ACTION**  
***(Wrongful Discharge in Violation of Public Policy)***

54. Plaintiff reaffirms, realleges, and incorporates herein paragraphs 1-50 of this Complaint as if set forth in full.
55. The State of Utah has established a clear and substantial public policy to enforce private contracts and to prevent parties from breaching these contracts on the bases of pretexts.
56. The State of Utah has also established a clear and substantial public policy requiring parties to contracts to perform the terms of these contracts in good faith and with fair dealing.
57. Plaintiff acquired a significant legal right when he contracted with UTOPIA to provide his professional services as an independent contractor.
58. UTOPIA terminated the contract citing insubordination.

59. As an independent contractor, Hogan was not capable of insubordination.
60. UTOPIA violated the clear public policy of the State of Utah by terminating the contract.
61. A person who terminates a contract for professional services solely on the basis of seeking to avoid performing a contractual obligation to a person providing professional services is liable for wrongful discharge in violation of public policy.
62. Hogan has undertaken all necessary action to mitigate his damages, including seeking alternate employment.
63. UTOPIA' actions caused damages to Hogan in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION**  
*(Promissory Estoppel)*

64. Plaintiff reaffirms, realleges, and incorporates herein paragraphs 1-60 of this Complaint as if set forth in full.
65. Hogan's first contract with UTOPIA began in 2008 starting in May of 2008, going to September 2008. It was extended to May, 2009. Then the current contract from May 2009 through May 15, 2011.
66. Although UTOPIA had not expressly agreed to renew the contract in May, Hogan and UTOPIA had engaged in multiple conversations that led Hogan to understand that the contract would be renewed.
67. Because of the importance of the marketing department to the overall success of UTOPIA, Hogan believed that the sudden termination of a key consultant in this project would be very disruptive to the overall mission of UTOPIA.



