

## Contractor/Employee Transition

### Background

As you are all aware, the ILEAS Executive Committee and staff have been working towards a transition from contractor to employee status for staff. All ILEAS staff are Form 10-99 contractors. The reasons for this are as follows:

- Initially, the original contract was with Ex. Director Page. The grant guidance would not allow the hiring of employees. Page paid for the office lease, telephone lines, computer equipment, etc. by himself and given a salary to compensate for that. He created Page Consulting, Inc. and managed the operation alone.
- As ILEAS grew, contractors were added. At the time, no one knew how long it would last, grants came and went and the grant guidance and State rules were that ILEAS had no management/administrative money and no employees were allowed.
- Eventually, ILEAS was able to obtain M&A funds and employees were allowed. However, ILEAS' attorney at the time, Bill Fuerer (recommended by Mike Chamness) gave Presidents Stryker, Owens and Beckwith the same advice. He indicated that it was his interpretation that given the temporary nature of the jobs, their derivations and applying ILEAS' circumstances to the IRS rules differentiating between employees and contractors, that ILEAS staff should remain contractors.
- The contract nature of the staff has been the adopted policy of the Governing Board since the beginning. Contract management has, in recent years, been delegated to the Executive Committee.
- Since ILEAS has grown substantially, it eventually happened that one of the contractors, whose contract was terminated, applied for unemployment. This garnered the attention of the Illinois Department of Employment Security (IDES).
- Once notified by IDES about the claim and the lack of an ILEAS account at IDES, ILEAS staff sought the advice of a labor attorney who advised that ILEAS really needed to convert to employees.
- A significant amount of work on this issue by the Executive Committee, Jim Page, Mick McAvoy and Dick Huston has been completed in the last few months. They have consulted with tax accountants, the ILEAS auditors and a labor attorney. On balance, several options were explored along with the advantages and disadvantages of each have been weighed.
- The conclusion has been reached based on the totality of the circumstances that ILEAS **must** convert the staff from pure contractors to contract employee as soon as possible. This arrangement appears to be the best in that it keeps costs down, minimizes the legal ramifications and yet keep ILEAS flexible to release staff when funding expires if necessary.

### Options

The Executive Committee has identified the several options below:

1. Employee Leasing Vendor – ILEAS released an RFP last summer for temporary or employee leasing services. There were two serious written proposals received. The Executive Committee and staff interviewed both potential vendors and gathered price quotes from them. This option was downgraded after seeing the large expense (up to 30% over cost of the staff member) and determining that the employee leasing company would significantly come in between ILEAS and the staff with regard to supervision and management. Additionally, it was rejected by most of the current staff who did not want to move from ILEAS to being a Manpower or Seville Staffing employee. This option would cost tens of thousands of dollars and probably force the layoffs of some to keep others.

2. ILEAS Foundation Provide Employees Instead of For-Profit Vendor – This was extensively researched by the ILEAS Foundation tax accountants. It was determined that since the Foundation would derive the majority of its funding from the ILEAS contract for personnel services instead of donations, it could, and probably would, be seen as a “straw man” by the Internal Revenue Service (IRS) and IDES. The Foundation would probably lose its charity tax status.
3. Staff Remains Contractors – The IRS and IDES would eventually audit us and ILEAS could face significant fees and fines. While much of our staff could arguably be considered contractors by IRS standards, we have found that the IDES standards of who is an employee and who is not, is VERY strict. If they found out in an audit that we thought it was a problem and did nothing, the fines could be for us to pay what we should have in withholding for four years PLUS 24% interest each year. For obvious reasons, this option was rejected.
4. Someone Form A For-Profit Corporation And Bid For The Service But Take No Profit So No Tax - – This was rejected as a violation of the bidding process and there are questions about who was responsible for this – an individual, a group of individuals, etc. It would also take way too long to work out. It could also be seen as a “straw man.”
5. Staff Convert to ILEAS Employees – This appears to be the cleanest, most legal and cheapest route to take. The pure contracts that we have now would all expire on December 31<sup>st</sup> and on January 1<sup>st</sup> everyone would be converted to being employees so as not to split tax years. While everyone examined the other options above in an attempt to avoid creating permanent jobs, it has been determined that the staff can be “at will” contract employees where work permanence is worked out in a contract.

### **Factors to Consider**

- Coincidentally, until the end of the year, the IRS is running a Voluntary Classification Settlement Program (VCSP). That means that any employer who has misclassified employees as contractors instead of employees can go to the IRS, submit a plan to change classifications in 60 days and avoid any audits and fines. The only thing we would have to pay is 10% of what we would have paid in the last tax year. Dick has figured that amounts to around \$15,000 for ILEAS.
- The IDES has no such program. They are more strict than the IRS on who is an employee and who is a contractor. One of IDES’ tests is that contractors must advertise in the phone book and derive MOST of their income from other clients. EVERY ILEAS contractor is an employee according to IDES. The tax accountant believes that IDES would consider Regional Planning Coordinators as contractors and everyone else as employees. (That differentiation is still being worked out)
- Our labor attorney checked with the IDES Assistant General Counsel this week, we found out that they very rarely do sample or random audits and our best bet is to convert everyone to employees now and start paying unemployment tax immediately. Once everyone has four quarters in the system, then if someone gets laid off and they apply for unemployment benefits, they would qualify and IDES won’t start an audit.
- If ILEAS converts contractors to employees it will have to comply with all the laws and procedures involving employees – Fair Labor Standards Act, evaluations, etc. While those can be overwhelming at first, Executive Director Page believes ILEAS can implement that structure in a legally minimalist manner. ILEAS utilize policies and directives from some of its member agencies in order to minimize development time. ILEAS can hire a payroll service to process checks and W-2’s; etc. for about \$3,000 to \$4,000 annually.
- There will be FLSA exempt and non-exempt classifications. Exempt employees like the Regional Planning Coordinators, Dick Huston, Jim Page, etc. will see very little working condition changes. The non-exempt staff like Jim Young, Michele Watson, Jones and Moore will see more of a change with time cards, etc. – more of a traditional employee status.

- Job Descriptions must be developed for each position or classification. Keep in mind that 30 trainers will be one job description, 11 RPC's will be one job description and two others have already been written for the Manpower/Seville exercise. There are approximately 12-15 more to go.
- Contracts – employees can still have contracts. It is our intent to continue to have contracts which primarily govern the conditions for separation.

### **Implementation**

The most pressing concern is who is going to wade through the myriad of details to make this conversion happen. As Executive Director, Jim Page believes it would be in the best interest of ILEAS' future if he spends more time in fund development activities rather than the daily supervision and oversight of the staff. Given the G8/NATO, the preparation for the two-hour Chiefs Conference presentation, the upcoming financial and inventory audit, the budget realignment and several other pressing major projects, time simply is NOT available to make this transition happen in the next 60 days. The IRS VCSP requires that ILEAS give 60 days' notice that we are reclassifying and have it done by January 1<sup>st</sup>. That is a TIGHT time schedule. We have discussed the need for an administrative assistant or Chief of Staff or Assistant Executive Director for some time. Now is the time to make this happen.

In order to make this happen expediently, it would be best to select someone from the current staff. That would keep the learning curve to a minimum and increase the potential for acceptance by the rest of the staff over the option of bringing in someone from the outside. This person also needs to work out of the ITC. This is NOT a remote or home office type of a job. Our alternatives are two-fold – Jim Page does it all or advertise and interview. The traditional interview process will take too long and ILEAS will pass the VCSP deadline. While a more deliberate process may be preferable, we have to move soon or risk missing the deadline. While this is, of course, a Board decision, Page would appreciate being allowed to exercise what is traditionally the chief executive's option of identifying the #2 at his discretion.

ILEAS is fortunate that there is one staff member that is a really good fit – Pat Carey. Pat was a chief for many years at Libertyville and has many years law enforcement experience. He was a NIPAS board member, knows a lot of law enforcement executives, is well respected and gets along with the entire staff. Like all the RPC's, he is a big ILEAS supporter. He is also willing to move to C/U. The proposal is to move Pat Carey to that position and have him start dedicating himself to the conversion process immediately.

As proposed at the last Board meeting, \$250,000 was put in the budget for conversion costs for the next 24 months. Converting one of our staff would be much cheaper than the Manpower/Seville options. It is recommended that he not immediately be replaced as an RPC in order to minimize the impact on ILEAS' budget. That can be re-considered after the first of the year.

### **Requested Board Action**

Staff requests that the Governing Board authorize:

1. The final conversion from contractors to contract employees for all ILEAS staff by January 1, 2012
2. The development of new contracts for each employee
3. Participation in the IRS Voluntary Classification Settlement Program
4. Re-assignment of Pat Carey from Regional Planning Coordinator to Chief of Staff
5. Authority to the Executive Committee to implement the above directives
6. Re-authorize the Executive committee to oversee the process of this transition and to manage the daily staff issues such as hiring, terminations, etc.

## ISPERN

### Background

Jim Page and Russ Gentry attended the October 5th ISPERN Board meeting. The ISPERN Board is made up of appointees from the Illinois Sheriffs Association, Illinois Association of Chiefs of Police, Illinois State Police, APCO, etc. We have posted a copy of the ISPERN Governing rules and policies to a news article on ISPERN on our home page. Eleven of the 13 Board members were present as well as John Kennedy (Executive Director of the ILIACP), Steve Jackson (the StateWide Interoperability Coordinator SWIC IL. Emergency Management Agency), Russ Gentry (ILEAS' Communications Coordinator) and Jim Page.

The discussion that has taken place at that meeting AND a lot of work that has gone on in the last year have involved the future of ISPERN. The bottom line is this:

- ISPERN is a two-part system – transmitters and management/dispatch by ISP and mobiles owned by locals. Many of the locals have ISPERN programmed into their primary VHF radios.
- All of the VHF ISPERN transmitters in the ISP districts are old and cannot be narrowbanded.
- ISP has unsuccessfully sought Federal Funds to provide StarCom to all agencies to replace ISPERN – cost estimated at \$218 million.
- The State of Illinois does not have the funds to replace the current VHF transmitters in the districts to keep ISPERN alive on VHF.
- Current plans are that VHF ISPERN will not be supported by ISP after December 31, 2012
- ISP is removing VHF radios from their squads
- VHF ISPERN and StarCom have been “patched” and can be simulcast
- The loss of VHF ISPERN in its current state will mean that there will be no direct communication between troopers and deputies/officers in the field outside of StarCom for those agencies that use StarCom routinely
- This also means the loss of ISP being able to communicate via the VHF “Point to Point” system
- The Chiefs and the Sheriffs (as represented at the meeting) want to retain VHF ISPERN as a continued viable interoperability channel amongst all LE in the State
- Steve Jackson from IEMA, the StateWide Interoperability Coordinator, wants to keep VHF ISPERN viable as well so that interoperability does not take a step backwards.
- The cost to replace all those VHF transmitters is estimated at \$840,000.
- Knowing all of this a year ago, ILEAS put into its FY11 budget sufficient funds to replace all the VHF ISPERN transmitters at ISP.
- Those funds were from ILEAS' grant request cut in March when Congress (as you recall in an effort to avoid a government shutdown) slashed homeland security funds/grants for states significantly and Illinois/ILEAS lost 38% of the budget.

The ISPERN Board recommended the following:

- Every effort should be made for ISPERN in VHF format to continue
- ISP will gather information on who has ISPERN, its statewide use, etc. and provide it to the ISPERN Board
- The ILIACP, ILEAS and the ISA were asked to write letters of support to the ISP Director to find funds to replace the VHF transmitters (the ILEAS letter can also be found on the ISPERN news article on our home page)
- If that effort fails, seek other funding – primarily from the Illinois Terrorism Task Force

Since replacing VHF ISPERN is not in the ITTF budget, \$840,000 of other ITTF programs will have to be cut to afford ISPERN. After the meeting, we learned from Steve Jackson that he talked to Don Kauerauf regarding funds. We have at our disposal for ISPERN, \$434,509 in FY10 equipment funds (remember that ILEAS just moved that from 08 to 10 in the last meeting – originally intended for RAD detectors and now available for equipment as directed by ITTF) AND \$1,254,085 in Interoperable Communications Grant Program (IECGP) that was originally slated to narrowband IREACH that is not necessarily needed now. ITTF has voted to delay any further PRD purchases for the foreseeable future. ILEAS is already the fiduciary for both of these grants.

There are also funds under ITTF's control in the Interoperable Emergency Communications Grant Program (IECGP) currently directed to the development of an IREACH patch. Those funds could be released to ILEAS by ITTF for ISPERN as well. In order to officially do that and get it done in a timely fashion the ILEAS Board must adopt to accept these proposals **BEFORE** the December 7<sup>th</sup> ITTF meeting so that the full ITTF can authorize the conversion and project. By utilizing these grants, it is possible to get ISPERN retained in VHF format and not use any funds already dedicated to local law enforcement under ILEAS' control.

Grant	Amount	Purpose	Status
10IECGPILE	\$1,254,085	IREACH Patch	Pending & available
FY11 Budget Request by ITTF Communications Committee	\$800,000	ISPERN Base Stations	Approved by ITTF but cut in federal budget reductions. Not currently approved or available
10ILEASSRT	\$434,509	Rad Detectors	Being held by ITTF/ILEAS – RAD Detectors project put on hold by ITTF

**Timeline**

1. The SIEC and the ILEAS Board both need to approve the reclassification of \$500,000 of the \$1,254,085 in 10IECGPILE funds from IREACH Patch to ISPERN Base Station replacement.
2. The ITTF and the ILEAS Board needs to approve the reclassification of the \$434,509 from PRDs to ISPERN.
3. The ISPERN Board must approve of ILEAS providing the funds to replace the ISPERN radios.

Once those board approvals occur and the ILEAS/ISP MOU is executed, then ILEAS has the authorization to move forward with ISP/ITTF Communications Committee/SWIC/SEIC on the actual replacement of the base stations.

- The ILEAS board is meeting on November 9<sup>th</sup> to discuss their approvals.
- The SIEC is meeting November 10<sup>th</sup> to discuss its part.
- ILEAS will initiate discussions with ISP on the MOU after the November 10<sup>th</sup> SIEC approval.
- ITTF is meeting December 7<sup>th</sup> and will consider the movement of funds.
- In December 2011, ILEAS ISP should have an MOU ready to go so that the actual project can start in January.

**Requested Board Action**

Staff requests that the Governing Board authorize:

1. The re-purposing of \$434,509 in 10ILEASSRT from purchasing personal radiation detectors to purchasing ISPERN base stations instead
2. The repurposing of an amount not to exceed \$500,000 of the 10IECGPILE grant from the development of an IREACH Patch to ISPERN.
3. The development and execution of an MOU with the Illinois State Police on the governance and maintenance of the ISPERN system and radios. The development and execution of this MOU will be overseen and approved by the Executive Committee.

## Budget

At the September 2011 Governing Board meeting, the following budget was proposed for discussion. The ITTF charter requires the full ITTF vote to adopt significant budget changes. Significant changes include moving funds from one grant to another, anything over \$100,000 or 20% of any single grant. Our budget realignment falls within those guidelines of requiring an ITTF vote. The next full ITTF meeting is on December 7, 2011. The budget proposal from September is re-printed below for consideration.

### **Federal State Homeland Security Grants**

As previously reported to the Board, Illinois took a 38% cut in FY2011 due to federal budget cuts. ILEAS ended up with \$4.1 million. In FY 10, we got \$6 million for LE programs. The House of Representatives passed a very restricted budget for homeland security for FY 2012. The Senate version is better, but still not good. The House version is \$380 million and the Senate version is \$430 million. ILEASD could be looking at \$2 million in FY 12.

ILEAS staff has reviewed every LE grant outstanding from FY08 to FY11 in an effort to realign the grants to lengthen and stabilize a fiscal environment for as long as possible. Staff has concluded that ILEAS has sufficient funds to survive until December 31, 2013. This assumes the following:

- The FY12 grants total AT LEAST \$866,154
- The \$2,000,000 in MDC Grants from FY10 is re-directed towards training and planning in order to maintain LE programs
- Increased use of the business account to supplement grant funds

Limiting an examination and reformation to the law enforcement programs at this time, staff has developed the following budget:

<b>ILEAS Law Enforcement Programs thru December 31, 2013</b>		
(This spreadsheet focuses on Law Enforcement programs and ILEAS Staff. NON-LE details(such as IESMA & IECGP are not included)		
<i>Bottom Line Up Front - ILEAS has sufficient funds to survive until 12/31/13 with its current configuration. This can be accomplished through extensive reordering of grant priorities and timetables. NOTE that this requires the redirection of the current \$2 million in MDC grant funds.</i>		
<b><u>Funds Available from FY 08-FY11*</u></b>	<b><u>Amount</u></b>	
UASI - FY10	\$48,000	
UASI- FY11	\$652,000	
LE Equipment	\$4,983,343	
IT	\$344,253	
Fiber	\$163,875	
Training	\$926,100	
Planning	\$753,308	
OT/BF	\$490,370	
Credentialing	\$733,696	
M&A	\$237,850	
Emergency Management Staff	\$180,000	
FY11 Available	\$4,156,000	
Business Account Available for LE Programs	\$150,000	
<b>Total</b>	<b>\$13,818,795</b>	
<b>*=(UASI included only for FY08-10)</b>		

<b><i>Program Requirements through December 31, 2013</i></b>	<b><i>Amount</i></b>	<b><i>Sub-Totals</i></b>
Special Teams Equipment	\$2,200,000	
OT/BF	\$4,150,000	
<b>Special Teams Total</b>		<b>\$6,350,000</b>
PPE Agencies	\$75,000	
Equipment	\$349,099	
<b>Equipment</b>		<b>\$424,099</b>
IT - Hardware/Software	\$150,000	
IT - Contractors	\$856,000	
<b>IT Total</b>		<b>\$1,006,000</b>
Training - Staff	\$661,000	
Training - Field	\$800,000	
Training Center Lease	\$416,000	
Training Center Expenses	\$70,000	
<b>Training Total</b>		<b>\$1,947,000</b>
Planning - Staff	\$1,773,000	
Planning - Conference	\$250,000	
Planning Expenses	\$100,000	
Planning Staff - non LE	\$315,000	
<b>Planning Total</b>		<b>\$2,438,000</b>
Credentialing - Staff	\$333,696	
Credentialing - Tier 1 Licensing	\$100,000	
Credentialing - Tier 2 Expenses	\$200,000	
<b>Credentialing</b>		<b>\$633,696</b>
Management and Administration	\$770,000	
<b>M&amp;A Total</b>		<b>\$770,000</b>
Employee Conversion Cost	\$250,000	
<b>Conversion Total</b>		<b>\$250,000</b>
<b>ILEAS Total Programmatic Costs</b>		<b>\$13,818,795</b>

### **Financial Planning Strategy**

While action needs to be taken on the Budget, the Board should consider the following proposals made by staff on a financial strategy to conserve funds as long as possible. Two proposals are being suggested by staff to that end:

**Matching Cost for PPE** – Since 2003, ILEAS has provided respirators free of charge to local law enforcement. Beside the initial \$6 million expenditure for the first 24,000, ILEAS has set aside around \$100,000 each year for masks for replacements of worn, broken, new officers, etc. Again, this was free of charge. ILEAS staff has recently had to monitor the requests closely to avoid abuse. It has been suggested that local agencies wanting more masks should pay matching co-pay for agencies to pay a progressive portion of the cost masks. For example, the proposal is:

<b>Year – Mask Cost</b>	<b>Percentage</b>	<b>Actual Cost Distribution</b>
<b><u>2012- \$344</u></b>		
Agency	10%	\$34
ILEAS	90%	\$310
<b><u>2013 - \$360</u></b>		
Agency	25%	\$90
ILEAS	75%	\$270
<b><u>2014 - \$378</u></b>		
Agency	50%	\$189
ILEAS	50%	\$189
<b><u>2015 - \$400</u></b>		
Agency	75%	\$300
ILEAS	25%	\$100
<b><u>2016 - \$420</u></b>		
Agency	100%	\$420
(ILEAS negotiates bulk prices for agencies)		

This progressive process still provides and economic advantage to the member agencies for four years. After that, ILEAS can still provide masks but at a better cost than the agencies could negotiate on their own so they still have an advantage going thru ILEAS.

Overtime/Backfill Reimbursement – ILEAS has paid the overtime/backfill reimbursements to agencies for monthly training (16 hours month for SRT and 8 hours for 6 months in a year for Mobile Field Force). Last month this totaled \$187,000 in ONE month. At that rate, ILEAS will run out of funds long before December 31, 2013. The original promise to all the WMD SRT teams was that they needed to train 16 hours per month for the first year and then back down to 8 hours per month. Since ILEAS has been flush with money, we have continued to pay at the 16 hour level. Now that funds are very tight, modification to this commitment needs reviewed. For instance, ILEAS could save \$216,000 annually by simply reimbursing at 90% instead of 100%.

ILEAS staff is doing analyses of the overtime data to see the effect on ILEAS’ budget and the reimbursements of the participating agencies.

### **Requested Board Action**

Staff requests that the Governing Board adopt the budget as presented and authorize the Executive Committee to work with staff to redirect current grants and submit grant changes to the ITTF in December.

A Board discussion should occur regarding the overtime/backfill vs. equipment purchases for special teams strategy and the establishment of priorities for budget resources with the intent of making a policy decision at the December 2011 meeting which would start January 1, 2012.