

# State of New Hampshire

DEPARTMENT OF SAFETY  
OFFICE OF THE COMMISSIONER  
33 HAZEN DR. CONCORD, NH 03305  
603/271-2791

MLC  
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JOHN J. BARTHELMES  
COMMISSIONER

July 23, 2018

The Honorable Neal M. Kurk, Chairman  
Fiscal Committee of the General Court  
State House  
Concord, New Hampshire 03301

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

### Requested Action

Pursuant to RSA 14:30-a, VI authorize the Department of Safety, Division of State Police, to accept and expend \$109,570.00 of pass-through federal funds, entitled Department of Safety Forensic Lab Preliminary Breath Testing (PBT's), from the Department of Safety, Office of Highway Safety, to purchase PBT devices for distribution to law enforcement officers. Effective upon Fiscal Committee and Governor and Council approvals through September 30, 2018. Funding Source: 100% Agency Income.

Funds are to be budgeted in the account titled:

02-23-23-234010-22110000 Dept. of Safety – Division of State Police – Highway Safety Equipment and Training Grants

<u>Class</u>	<u>Description</u>	<u>Current Adjusted</u> <u>Authorized</u>	<u>Requested Action</u>	<u>Revised Adjusted</u> <u>Authorized</u>
009-405921	Agency Income	\$ (176,068.50)	\$ (109,570.00)	\$ (285,638.50)
018-500106	Overtime	8,391.35	0.00	8,391.35
020-500311	Current Expenses	0.00	27,500.00	27,500.00
030-500311	Equipment	0.72	73,000.00	73,000.72
040-500800	Indirect Costs	1,089.19	3,570.00	4,659.19
046-500465	Consultants	164,921.00	0.00	164,921.00
060-500602	Benefits	1,665.53	0.00	1,665.53
080-500713	Out-of-State Travel	0.71	5,500.00	5,500.71
	Total	\$ 176,068.50	\$ 109,570.00	\$ 285,638.50

### Explanation

This request to accept and expend funds from the Office of Highway Safety will enable the NH Department of Safety Forensic Laboratory to purchase Preliminary Breath Testing (PBT) devices to be distributed to law enforcement officers who do not have these devices. An application for the PBT devices will be distributed statewide to law enforcement agencies, with distribution being based on criteria such as the number of patrol officers and the current number of PBT devices in the agency. Officers trained on these devices will then train the officers within their police agency. Distribution of the additional PBTs will be included in the current inventory in order to maintain a complete list of PBTs assigned to

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July 23, 2018

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each law enforcement agency. Distribution and use of these devices will assist in the apprehension and prosecution of suspected impaired drivers, thus improving safety on the NH highways for the motoring public. The use of PBTs is addressed by current NH law under RSA 265-A:15 in which it specifically allows the results of any test administered using a PBT to be introduced into evidence in a court for any relevant purpose.

The funds are to be budgeted as follows:

Funds in class 020, Current Expenses, will be used to purchase the calibration tanks and regulators needed for the PBT's.

Funds in class 030, Equipment, will be used for the purchase of the PBT's.

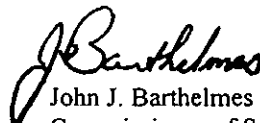
Funds in class 040, Indirect Costs, will be used to pay indirect cost to Administrative Services and applied to applicable expenses..

Funds in class 041, Audit Fund Set Aside, are not appropriated because the department that receives the Federal grant from the federal granting agency is responsible for paying the audit fund set aside.

Funds in class 080, Out-of-State Travel Reimbursement, will be used to train lab staff on the equipment.

In the event that Agency Income becomes no longer available General and/or Highway funds will not be requested to support this program.

Respectfully submitted,

  
John J. Barthelmes  
Commissioner of Safety

Department of Safety  
Highway Safety Equipment and Training Grants  
Fiscal Situation

02-23-23-234010-22110000

Federal Funds Awarded:

FFY 2018 - DOS Data Analyst - 10/1/2017 - 9/30/2018	\$16,583.25
FFY 2018 - NHSP VPN Installation - 10/1/2017-9/30/2018	\$164,921.22
FFY 2018 - DOS Forensic Lab PBT's - 7/1/18-9/30/2018	\$109,570.60
<b>Total Grant Funds Awarded</b>	<u>\$291,075.07</u>

Less: SFY 2018 Expenditures	\$5,435.23
Less: SFY 2019 Current Adjusted Authorized	\$176,068.50

Remaining excess grant funds available to appropriate \$109,571.34

This Request \$109,570.00

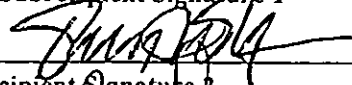
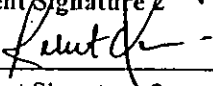
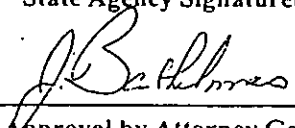
**OFFICE OF HIGHWAY SAFETY GRANT AGREEMENT**

The State of New Hampshire and the Subrecipient hereby  
Mutually agree as follows:  
**GENERAL PROVISIONS**

Project Title: DOS Forensic Lab PBT's

Project #: 308-18S-102

**1. Identification and Definitions.**

1.1. State Agency Name New Hampshire Department of Safety Office of Highway Safety		1.2. State Agency Address 33 Hazen Drive, Room 109A Concord, NH 03305	
1.3. Subrecipient Name Department of Safety Division of State Police		1.4. Subrecipient Address 33 Hazen Drive Concord, NH 03305	
Chief's Email Address:		Grant Contact Email: Timothy.pifer@dos.nh.gov	
1.4.1 Subrecipient Type (State Govt, City/Town Govt, County Govt, College/University, Other (Specify) State		1.4.2 DUNS 060340564	
1.5. Subrecipient Phone # 603-223-3854	1.6. Effective Date July 1, 2018	1.7. Completion Date September 30, 2018	1.8. Grant Limitation \$109,570.60
1.9. Grant Officer for State Agency John Clegg		1.10. State Agency Telephone Number 603-271-2893	
"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Subrecipient Signature 1 		1.12. Name & Title of Subrecipient Signor 1 Timothy J. Pifer, Forensic Laboratory Director	
Subrecipient Signature 2 		Name & Title of Subrecipient Signor 2 Robert I. Quinn, DOS Assistant Commissioner	
Subrecipient Signature 3		Name & Title of Subrecipient Signor 3	
1.13. Acknowledgment: State of New Hampshire, County of _____, on / / , before the undersigned officer, personally appeared the person(s) identified in block 1.12., known to me (or satisfactorily proven) to be the person(s) whose name is signed in block 1.11., and acknowledged that he/she executed this document in the capacity indicated in block 1.12.			
1.13.1. Signature of Notary Public or Justice of the Peace (Seal)		1.13.2 Name & Title of Notary Public or Justice of the Peace	
1.14. State Agency Signature(s) 		1.15. Name & Title of State Agency Signor(s) John J. Barthelmes, Commissioner NH Department of Safety Date: 6/28/18	
1.16. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required) By: Assistant Attorney General, On: / /			
1.17. Approval by Governor and Council (if applicable) By: On: / /			

2. **SCOPE OF WORK:** In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-P:55-63, the Subrecipient identified in block 1.3 (hereinafter referred to as "the Subrecipient"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being hereinafter referred to as "the Project").

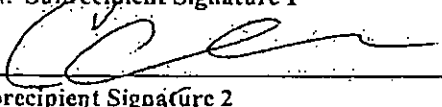
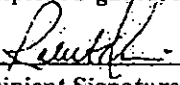
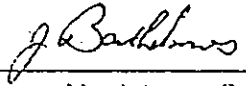
OFFICE OF HIGHWAY SAFETY GRANT AGREEMENT

The State of New Hampshire and the Subrecipient hereby  
Mutually agree as follows:  
GENERAL PROVISIONS

Project Title: DOS Data Analysis

Project #: 310-18S-015

1. Identification and Definitions.

1.1. State Agency Name New Hampshire Department of Safety Office of Highway Safety		1.2. State Agency Address 33 Hazen Drive, Second Floor Concord, NH 03305	
1.3. Subrecipient Name NH Department of Safety Division of State Police		1.4. Subrecipient Address 33 Hazen Drive Concord, NH 03305	
Chief's Email Address: Colonel Christopher J. Wagner		Grant Contact Email: Christopher.wagner@dos.nh.gov	
1.4.1 Subrecipient Type (State Govt, City/Town Govt, County Govt, College/University, Other (Specify) State		1.4.2 DUNS  060340564	
1.5. Subrecipient Phone # 603-223-8813	1.6. Effective Date October 1, 2017	1.7. Completion Date September 30, 2018	1.8. Grant Limitation \$16,583.25
1.9. Grant Officer for State Agency John A. Clegg		1.10. State Agency Telephone Number 603-271-2893	
"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1. Subrecipient Signature 1 		1.12. Name & Title of Subrecipient Signor 1 Colonel Christopher J. Wagner Director, NH State Police	
Subrecipient Signature 2 		Name & Title of Subrecipient Signor 2 Robert L. Quinn DOS Assistant Commissioner	
Subrecipient Signature 3		Name & Title of Subrecipient Signor 3	
1.13. Acknowledgment: State of New Hampshire, County of _____, on / / , before the undersigned officer, personally appeared the person(s) identified in block 1.12., known to me (or satisfactorily proven) to be the person(s) whose name is signed in block 1.11., and acknowledged that he/she executed this document in the capacity indicated in block 1.12.			
1.13.1. Signature of Notary Public or Justice of the Peace (Seal)		1.13.2 Name & Title of Notary Public or Justice of the Peace	
1.14. State Agency Signature(s) 		1.15. Name & Title of State Agency Signor(s) John J. Barthelmes, Commissioner NH Department of Safety Date: 11/3/17	
1.16. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required) By: _____ Assistant Attorney General, On: / /			
1.17. Approval by Governor and Council (if applicable) On: / /			

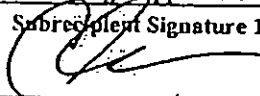
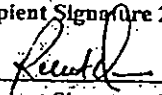
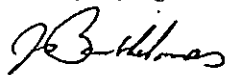
**OFFICE OF HIGHWAY SAFETY GRANT AGREEMENT**

The State of New Hampshire and the Subrecipient hereby  
Mutually agree as follows:  
**GENERAL PROVISIONS**

Project Title: NHSP VPN Installation

Project #: 310-18S-002

**1. Identification and Definitions.**

1.1. State Agency Name New Hampshire Department of Safety Office of Highway Safety		1.2. State Agency Address 33 Hazen Drive, Second Floor Concord, NH 03305	
1.3. Subrecipient Name NH Department of Safety Division of State Police		1.4. Subrecipient Address 33 Hazen Drive Concord, NH 03305	
Chief's Email Address: Christopher J. Wagner		Grant Contact Email: christopher.wagner@dos.nh.us	
1.4.1 Subrecipient Type (State Govt, City/Town Govt, County Govt, College/University, Other (Specify) State		1.4.2 DUNS  060340564	
1.5. Subrecipient Phone # 603-223-3888	1.6. Effective Date October 1, 2017	1.7. Completion Date September 30, 2018	1.8. Grant Limitation \$164,921.22 *
1.9. Grant Officer for State Agency John A. Clegg		1.10. State Agency Telephone Number 603-271-2893	
"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Subrecipient Signature 1 		1.12. Name & Title of Subrecipient Signor 1 Colonel Christopher J. Wagner Director, NH State Police	
Subrecipient Signature 2 		Name & Title of Subrecipient Signor 2 Robert L. Quinn DOS Assistant Commissioner	
Subrecipient Signature 3		Name & Title of Subrecipient Signor 3	
1.13. Acknowledgment: State of New Hampshire, County of _____, on / / , before the undersigned officer, personally appeared the person(s) identified in block 1.12., known to me (or satisfactorily proven) to be the person(s) whose name is signed in block 1.11., and acknowledged that he/she executed this document in the capacity indicated in block 1.12.			
1.13.1. Signature of Notary Public or Justice of the Peace (Seal)		1.13.2 Name & Title of Notary Public or Justice of the Peace	
1.14. State Agency Signature(s) 		1.15. Name & Title of State Agency Signor(s) John J. Barthelmes, Commissioner NH Department of Safety Date: 11/8/17	
1.16. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required) By: _____ Assistant Attorney General, On: / /			
1.17. Approval by Governor and Council (if applicable) By: _____ On: / /			

Subrecipient Initials \_\_\_\_\_  
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Date \_\_\_\_\_

# TITLE XXI

## MOTOR VEHICLES

### CHAPTER 265-A

#### ALCOHOL OR DRUG IMPAIRMENT

#### Driving or Operating Under the Influence of Drugs or Liquor

##### Section 265-A:15

###### 265-A:15 Preliminary Breath Test. –

I. Any law enforcement officer, authorized agent, or peace officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving, operating, attempting to operate, or in actual physical control of an OHRV, driving, attempting to drive, or in actual physical control of a vehicle, or operating, attempting to operate, or in actual physical control of a boat upon the public waters of the state while under the influence of intoxicating liquor or controlled drug, prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic, which impairs a person's ability to drive or while the person's alcohol concentration was 0.08 or more or in the case of a person under the age of 21, 0.02 or more or in the case of a person licensed to operate and operating a commercial vehicle or operating a commercial vessel and licensed pursuant to RSA 270-E:22 at the time of the offense, 0.04 or more may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. The results of any test administered under this section may be introduced into evidence in a court for any relevant purpose. Failure to submit to the test shall not constitute a violation of this chapter. Evidence of a failure to submit to a preliminary breath test shall not be admissible in court in any prosecution under this subdivision, except for the purpose of determining whether the officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 265-A:2, I(a), RSA 265-A:2, II, or RSA 265-A:3 was under the influence of intoxicating liquor or any controlled drug, prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic, which impairs a person's ability to drive. Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The police officer requesting the test shall advise orally the person to be tested that his or her failure to take the test or his or her taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 265-A:4. The results of the test shall be furnished immediately to the person tested by the police officer administering the test and in writing, if requested.

II. No device may be used to give a chemical test under the provisions of this section unless it has been approved as to type and make by the department of safety.

III. The commissioner of the department of safety shall adopt rules, pursuant to RSA 541-A, relative to methods and procedures for evaluation and approval of preliminary breath test devices.

Source. 2006, 260:1. 2012, 267:12, eff. Jan. 1, 2013.