13.5.2 **Utility Reimbursement**

The authority to reimburse or not reimburse a Utility is based on provisions contained in Section 10 Subdivision 24, and Section 10 Subdivision 24-b of the Highway Law.

Under current law, in general, municipally owned utility facilities are eligible for reimbursement whether on highway right of way or private property and nonmunicipally owned utility facilities (e.g., Transportation Corporations or private utilities) would only be eligible when on private right of way or for projects with Interstate categories of funding.

Under Section 10 Subdivision 24, the Department has the ability to reimburse municipally owned utility facility relocations provided the relocations are required by Department construction, and under present policy in virtually all cases we do.

Under Section 10 Subdivision 24-b, the Department is authorized to use construction funds for the removal, relocation, replacement, or reconstruction of privately, publicly, cooperatively owned utility facilities or facilities of a transportation corporation located on privately owned property. The Department defines “private property” as property not owned by any governmental (Federal, State, local) entity, agency, authority, etc. However, reimbursement to Utilities owned by Transportation Corporations or Utilities acting as Transportation Corporations (Niagara Mohawk, Con Edison, Verizon, etc.) located on state highway right of way is limited to projects with Interstate categories of funding and other limited circumstances discussed in Section 13.5.2.2 D.

Utility reimbursement can be accomplished by incorporating utility facility work in the Department’s construction contract or by direct payment to the Utility for work performed. If the work is to be incorporated into the Department’s construction contract, a Utility Work Agreement (Form HC 140) is required (this is the only agreement required). If direct payments are to be made to the Utility, then either a “Municipal Agreement”, a “Reimbursement Agreement”, or an “Agreement to Provide Compensation for the Removal, Relocation, Replacement, or Reconstruction of Utility Facilities and Appurtenances Located on Privately Owned Property” is required and shall be obtained by the Region in addition to the Utility Work Agreement. In addition, a Highway Work Permit is required by the Regional Traffic and Safety Group and 17 NYCRR 131.16 to specify conditions under which the Utility will be allowed to perform work on state highway right of way. It should be noted that a Highway Work Permit is not to be substituted for a Utility Work Agreement (Form HC 140) and vice versa.

Guidance regarding completing the agreements is provided in Section 13.5.2.2.