

**STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT made as of July 23, 2001, between Nassau County Board of County Commissioners, Post Office Box 1010, Fernandina Beach, Florida 32035, ("Owner"), and Bessent, Hammack & Ruckman, Inc., 1900 Corporate Square Boulevard, Jacksonville, Florida 32216, ("Engineer").

Owner intends to enter into a contract with Engineer, as an independent contractor, for professional engineering, planning and environmental services with respect to transportation and highway design for roadway improvements to the following Nassau County roadways: BARNWELL ROAD (the "Project"). Engineer is to observe and verify existing conditions at the Project Site to prepare plans for improvements to the facility and to provide a letter of exemption from the St. Johns River Water Management District.

Owner and Engineer in consideration of their mutual covenants hereinafter set forth and in subsequently issued Supplement Agreements agree in respect to the performance of professional engineering services by Engineer and the payment of those services by Owner as set forth below.

1. BASIC SERVICES OF ENGINEER.

1.1 General.

Engineer shall provide for Owner or its designee professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided, including professional engineering consultation and advice and furnishing customary civil engineering services incidental thereto.

1.2 Preliminary Design Phase.

After written authorization to proceed with the Preliminary Design Phase, Engineer shall:

1.2.1 Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings and outline specifications of the Project.

1.2.2 Based on the information contained in the preliminary design documents, submit a preliminary opinion of probable Project Construction Costs.

1.2.3 Furnish five (5) copies of the above Preliminary Design documents and present and review them in person with Owner or its designee.

1.3 Final Design Phase.

After written authorization to proceed with the Final Design Phase, Engineer shall:

1.3.1 On the basis of the accepted Preliminary Design documents and the preliminary opinion of probable Project Construction Costs, prepare for incorporation into the Contract Documents, final drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications.

1.3.2 Provide technical criteria, written descriptions and design and data for Owner or its designee's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist Owner or its designee in consultations with appropriate authorities.

1.3.3 Advise Owner or its designee of any adjustments to the latest opinion of probable Project Construction Costs caused by changes in general scope, extent or character or design requirements of the Project or Construction Costs. Furnish to Owner or its designee a revised opinion of probable Project Construction Costs based on the Drawings and Specifications.

1.3.4 Prepare for review and approval by Owner or its designee, its legal counsel and other advisors, construction contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders and assist in the preparation of other related documents.

1.3.5 Furnish five (5) copies of the above documents and of the Drawings and Specifications and present and review them in person with Owner or its designee.

1.4 Bidding Phase.

After written authorization to proceed with the Bidding Phase, Engineer shall:

1.4.1 Attend pre-bid conference.

1.4.2 Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

1.4.3 Tabulate bids, evaluate bid for completeness and conformance with bidding requirements and recommend the award of construction contract.

2. **POST DESIGN SERVICES.**

The following Post Design Services are to supplement the original agreement for Professional Services. Fees for additional services will be negotiated on a per task basis utilizing the man hour rates as established under this contract.

a. Attend monthly on-site meetings with County and Contractor for interpretation of design specifications.

b. Although the County will be providing the daily CEI inspections, the Engineer shall perform periodic site visits and report to the County any work failing to conform to the Contract Documents or which in any way appears to be deficient, defective, or otherwise not in accordance with good engineering or construction practices. These are to be done at the time of the monthly meetings.

c. Respond to Request for Information from the Contractor or Owner.

d. At the Owner's request, review shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections, any other data which the Contractor is required to submit for the purpose of verifying acceptability in conformance with the requirements and information given in the Contract Documents, and assemble maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection as required in construction contracts related to the project.

e. At the Owner's request, review, comment on and/or approve change orders to the Contractor.

f. Receive review and approve as-built drawings prepared by the Contractor for compliance with the requirements of the Contract Documents.

3. ADDITIONAL SERVICES OF ENGINEER.

- 3.1 Services resulting from changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, Owner's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond Engineer's control.
- 3.2 Upon acceptance of the final Contract Document(s) for the Project(s) the Owner or its designee and Engineer may define services as necessary to administer the construction contract(s).
- 3.3 All modifications or additions to the scope of services ("Basic Services") provided by the Engineer will require the prior written approval of the Owner or its designee. Additional services, fee and/or schedule modifications, if approved, will be added by a Supplemental Agreement to this Agreement.

4. SCHEDULE.

Engineer shall insure to the best of its ability that the Services, required of the Engineer hereunder, shall be accomplished within the schedule, attached hereto as Exhibit "A" (hereinafter, the "Schedule"). If the engineer fails to perform within the Schedule and the failure to perform is determined by mediation in accordance with the provisions of Section 10.2 to be attributable to the Engineer, Owner may reduce the basic compensation in an amount to be determined by the Mediator.

5. OWNER OR ITS DESIGNEE'S RESPONSIBILITIES.

Owner or its Designee shall accomplish the following in a timely manner so as not to delay the services of Engineer:

- 5.1 Owner designates the Director of Public Works or his designee as Owner's authorized representative (hereinafter "Owner's Designee") (hereinafter collectively, referred to as "Owner") with respect to the services to be rendered under this Agreement. Such person(s) shall have complete authority to transmit instructions, receive information, interpret and define

Owner's policies and decisions with respect to Engineer's services for the Project.

- 5.2 Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner or its designee will require to be included in the Drawings and Specifications.
- 5.3 Assist Engineer by placing at Engineer's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 5.4 Arrange for access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.
- 5.5 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by Engineer, obtain advice of any attorney, and other consultants as owner or its designee deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of Engineer.
- 5.6 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 5.7 Furnish to Engineer data or estimated figures as to Owner or its designee's anticipated costs for services to be provided by others for Owner or its designee so that Engineer may make the necessary findings to support opinions of probable Project Construction Costs.
- 5.8 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- 5.9 Give prompt written notice to Engineer whenever Owner or its designee observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services, or any defect or non-conformance in Engineer's services.

5.10 Direct Engineer to provide, as required by Owner, Additional Services, as required.

5.11 Bear all costs incident to compliance with requirements of this Section 5.

6. PERIODS OF SERVICE.

6.1 The provisions of this Section 6 and the rate of compensation for Engineer's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Engineer's obligation to render Basic Services hereunder will extend for a period of ten (10) months from the date of receipt by Engineer of the written Notice to Proceed. Exhibit "A" Entitled "Project Schedule", attached hereto and made a part hereof, sets forth the specific periods of time for rendering the services.

6.2 Upon written authorization from Owner or its designee, Engineer shall proceed with the performance of the services called for herein.

6.3 If Owner or its designee has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of Engineer's services shall be adjusted equitably to be agreed upon by Owner or its designee and Engineer.

7. PAYMENTS TO ENGINEER.

7.1 Methods of Payment for Services and Expenses of Engineer.

7.1.1 For Basic Services. Owner shall pay Engineer for Basic Services rendered a fee of \$ 82,163.00 for all Basic Services in draws based on the percentage of the project that is complete.

7.1.2 For Additional Services. Owner shall pay Engineer for Additional Services as required by Owner, rendered herein. Fees for additional services will be negotiated on a per task basis utilizing the man hour rates as established under this contract. Additional Services Provided by Engineer shall have the prior written approval of owner or its designee.

7.2 Payments.

7.2.1 If Owner or its designee fails to make any payment due Engineer for services and expenses within forty five (45) days after receipt of Engineer's statement therefor, the

amounts due Engineer will be increased at the rate of one and one-half (1½ %) percent per month from said forty-fifth (45th) day, and in addition, Engineer may, after giving seven (7) days written notice to Owner or its designee, suspend services under this Agreement until Engineer has been paid in full all amounts due to services, expenses and charges, including all accrued by unpaid interest without Engineer incurring liability due to such suspension.

7.2.2 In the event of termination by Owner or its designee under Paragraph 9.1, Engineer shall be compensated pursuant to a mutually agreed upon percentage of completion of the project.

8. CONSTRUCTION COST AND OPINIONS OF COST.

8.1 Construction Cost.

The construction cost of the entire project (herein referred to as "Construction Cost") means the cost to Owner or its designee of those portions of the entire Project designed and specified by Engineer, but it will not include Engineer's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Owner's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to Owner or its designee pursuant to Paragraph 5.7.

8.2 Opinions of Cost.

Since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Engineer's opinions of probable Project Construction Costs and Construction Cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional Engineer, familiar with the construction industry; but Engineer cannot and does not guarantee that proposals, bids or actual Project or Construction Costs will not vary from opinions of probable cost prepared by Engineer. If, prior to the Bidding Phase, the Owner or its designee wishes greater assurance as to Project or construction Costs, Owner or its designee shall employ an independent cost estimator.

9. **TERMINATION OR SUSPENSION.**

9.1.1 Engineer shall be considered in material default of this Agreement and such default will be considered cause for Owner to terminate this Agreement, in whole or in part, as further set forth in this Section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by Owner, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Engineer or by any of Engineer's principals, partners, officers, or directors, or (d) failure to obey laws, ordinances, regulations, or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The Owner may so terminate this Agreement, in whole or in part, by giving the Engineer seven (7) calendar days' written notice.

9.1.2 If, after notice of termination of this Agreement as provided for in Paragraph 9.1 above, it is determined for any reason that Engineer was not in default, or that its default was excusable, or that Owner otherwise was not entitled to the remedy against Engineer provided for in Paragraph 9.1.1, then the Notice of Termination given pursuant to Paragraph 9.1.1 shall be deemed to be the Notice of Termination provided for in Paragraph 9.1.3 below and Engineer's remedies against Owner shall be the same as and limited to those afforded Engineer in Paragraph 9.1.3 below.

9.1.3 Owner shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar days' written notice to Engineer. In the event of such termination of convenience, Engineer's recovery against Owner shall be limited to that portion of the Engineer's compensation earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Engineer that are directly attributable to the termination, but Engineer shall not be entitled to any other or further recovery against Owner, including, but not limited to, anticipated fees or profit on work not required to be performed.

9.1.4 Upon termination, the Engineer shall deliver to Owner all original papers, records, documents, drawings, calculations, models, and other materials in Engineer's

possession or control arising out of or relating to this Agreement.

9.1.5 The Owner shall have the power to suspend all or any portions of the services to be provided by Engineer hereunder upon giving Engineer two (2) calendar days' prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, the Engineer's sole and exclusive remedy shall be to seek an extension of time to its schedule.

9.1.6 Contract may be cancelled by the county for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s.24(a) of Article I of the State Constitution and s.119.07(1).

9.2 Force Majeure.

Should services be delayed at any time during period of this Agreement due to changes ordered in the services by Owner or its designee, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Engineer's control, or by other causes which the Owner or its designee determines may justify the delay, then an extension for performance of this Agreement may be granted to Engineer by Owner or its designee.

9.3 Reuse of Documents.

All documents including Drawings and Specifications prepared or furnished by Engineer (and Engineers' independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project and Engineer shall retain an ownership and property interest therein whether or not the Project is completed. Owner or its designee may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner or its designee and others; however, such documents are not intended or represented to be suitable for reuse by Owner or its designee or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer, or to Engineer's independent professional associates or consultants, and Owner shall indemnify and hold harmless Engineer and Engineer's independent professional

associates and consultants from all claims, damages, losses, and expenses including attorney's' fees arising out of or resulting therefrom.

9.4 Insurance.

Engineer shall maintain, to the extent reasonably available, the following insurance coverages during the performance of its Services under this Agreement:

Workers Compensation & Employers' Liability	Statutory
General Liability Bodily Injury/Property Damage Combined (including contractual)	\$1,000,000/\$1,000,000
Automobile Liability Bodily Injury/Property Damage Combined	\$1,000,000/\$1,000,000
Professional Liability (including errors and omissions)	\$1,000,000/\$1,000,000

All insurance policies required by this Agreement shall include the following provisions and conditions by endorsement to the policies:

9.4.1 The term "The Board of County Commissioners for Nassau County, Florida", shall include Nassau County, Florida, a political subdivision of the State of Florida, and all authorities, Board, Bureaus, Commissioners, Divisions, Departments and Offices thereof, and all individual members and employees thereof in their official capacity, and/or while acting on behalf of either Nassau County, Florida, or the Board of County Commissioners of Nassau County, Florida.

9.4.2 All insurance policies, other than the Professional Liability policy and the workers' Compensation policy, provided by Engineer to meet the requirements of this Agreement shall name the Board of County Commissioners of Nassau County, Florida, as that name is defined in 9.8.1 above, as an additional insured as to the operations of the Engineer under the Contract Documents and shall contain a severability of interests provisions.

9.5 Controlling Law.

9.5.1 This agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto shall be governed, interpreted, construed and enforced, pursuant to the laws of the State of Florida, and ordinances or regulations of the County of Nassau. Venue for any litigation arising from this Agreement shall be in Nassau County, Florida.

9.5.2 Owner and Engineer hereby knowingly, voluntarily and intentionally waive the right any of them have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.

9.6 Subletting, Assignment and Transfer.

Owner and Engineer each binds himself, his partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assignees and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

10. SPECIAL PROVISIONS AND EXHIBITS.

10.1 Indemnification.

10.1.1 Owner agrees that Engineer is not responsible for the Project Site (including the handling, clean-up or disposal of hazardous substances from the Project Site) and Owner agrees to indemnify and hold Engineer harmless from any and all liability, claims, damages or other expenses arising out of, resulting from, or otherwise connected with hazardous substances from the Project Site, except for Engineer's willful misconduct or gross negligence.

10.1.2 The Engineer shall indemnify and hold harmless the Owner, and its officers and employees, from liabilities, damages, losses, and costs including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Engineer and persons employed by or utilized by the Engineer in the performance of this Agreement.

10.1.3 The remedy provided to an indemnitee by Paragraph 10.1.2 shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

10.1.4 The remedy provided to an indemnitee by this Agreement shall survive this Agreement and shall not be limited in any manner by acceptance, final completion, or final payment.

10.1.5 A claim for indemnity pursuant to this Agreement shall be commenced within the period established under Florida law for commencement of an action founded on the design, planning, or construction of an improvement to real property.

10.1.6 The provisions of Section 10.1 are severable and if, for any reason, any one or more of the provisions contained in the Section shall be held by a court of competent jurisdiction to be invalid, illegal, against public policy, or unenforceable in any respect, the invalidity, illegality, being against public policy, or unenforceability shall not affect any other provision of this Section which shall remain in effect and be construed as if the invalid, illegal, against public policy, or unenforceable provision had never been contained in the Section.

10.2 **Dispute Resolution.**

Any dispute arising under this Agreement, which is not disposed of by agreement, shall be decided by a mediator, who shall reduce his/her decision to writing and furnish a copy to both parties. Claims disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen from the Supreme Court approved list of mediators in the Fourth Judicial Circuit and the cost of mediation shall be borne by the Engineer. The decision of the mediator shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, or so grossly erroneous as to necessarily imply bad faith or not supported by substantial evidence.

10.3 **Partial Invalidity.**

If any provision of this Agreement or any application thereof to any person or circumstance shall, to any extent, be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of the Agreement shall be valid and enforced to the fullest extent permitted by law.

10.4 Notices.

Any notice, demand, request or other instrument which may be or required to be given under this Agreement shall be delivered in person, sent by United States Certified or Registered Mail, postage prepaid, or sent by a reputable overnight courier service and shall be addressed to either party at the address as hereinbelow given. Any notice shall be deemed delivered upon hand delivery or three (3) days after depositing such notice in postal receptacles return receipt requested, or one (1) day after depositing such notice with reputable overnight courier services. Either party may designate in writing such other address as shall be given by written notice.

If to Owner:

Nassau County Public Works Department
213 Nassau Place
Yulee, Florida 32097
Attn: Jack J. D'Amato, Public Works Director

If to Engineer:

Gene L. Howerton, P.E.
Vice President
Bessent, Hammack & Ruckman, Inc.
1900 Corporate Square Boulevard
Jacksonville, FL 32216

10.5 No Partnerships.

Nothing contained in this Agreement shall, or shall be deemed or construed so as to create the relationship of employer-employee, principal-agent, joint venturers, co-adventurers, or partners between Owner and Engineer and they are and shall remain independent contractors one as to the other.

10.6 Counterparts.

This Agreement may be executed in two or more counterparts, each of which may be executed by one or more of the Parties hereto, but all of which, when delivered and taken together, shall constitute but one (1) Agreement binding upon all of the parties hereto.

10.7 Securing Agreement.

10.7.1 Engineer warrants that Engineer has not employed or retained any company or person, other than a bona fide employee working solely for Engineer, to solicit or

secure this Agreement, and that Engineer has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Engineer, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the ward or making of this Agreement.

10.8 Entire Agreement.

This Agreement together with the exhibits identified above constitute the entire Agreement (consisting of pages 1 through 14, inclusive) between the Owner and Engineer and supersede all prior written or oral understandings. This Agreement and said exhibits may only be amended, supplemented, modified or canceled by a duly executed written instrument.

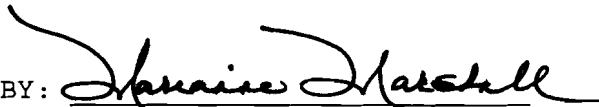
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

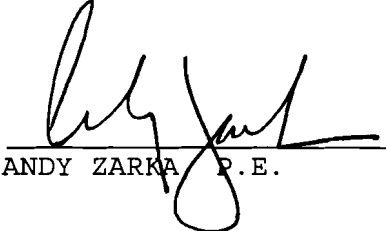
OWNER:

ENGINEER:


BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

BESSENT, HAMMACK & RUCKMAN, INC.

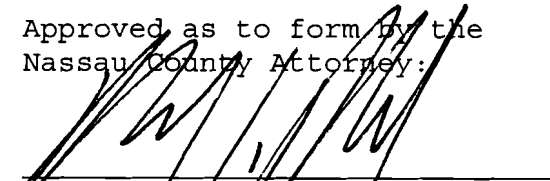
BY: 
MARIANNE MARSHALL
Its: Chairman

BY: 
ANDY ZARKA P.E.

ATTEST:


J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney:


MICHAEL S. MULLIN

Barnwell Road Repave Schedule

Exhibit "A"

ID	Task Name	Duration	Start	Finish	2002												
					Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
1	Notice To Proceed Issued By Nassau County	0 days	Mon 7/30/01	Mon 7/30/01		7/30											
2	Preliminary Design Phase	3 mons	Mon 7/30/01	Fri 10/19/01													
3	Submit Preliminary to County	0 days	Fri 10/19/01	Fri 10/19/01													
4	County Review Preliminary	23 days	Mon 10/22/01	Wed 11/21/01													
5	County Provide Comments to BHR	0 days	Wed 11/21/01	Wed 11/21/01													
6	Final Design Phase	3 mons	Thu 11/22/01	Wed 2/13/02													
7	Submit Final Design to County	0 days	Wed 2/13/02	Wed 2/13/02													
8	County Review Final	23 days	Thu 2/14/02	Mon 3/18/02													
9	County Provide Final Comments to BHR	0 days	Mon 3/18/02	Mon 3/18/02													
10	BHR Address Final Comments	15 days	Tue 3/19/02	Mon 4/8/02													
11	Bidding Phase	6 wks	Tue 4/9/02	Mon 5/20/02													
12	Construction Contract Award	0 days	Thu 6/20/02	Thu 6/20/02													

Project: Barnwell
Date: Mon 7/23/01

Task		Rolled Up Task		External Tasks	
Progress		Rolled Up Milestone		Project Summary	
Milestone		Rolled Up Progress		Group By Summary	
Summary		Split			