

## **INSTRUCTIONS FOR GENERAL CONTRACTOR PROGRESS BILLING INVOICE--INSTALLMENT (Fixed Price Contract)**

### **Introduction**

Use this Invoice as a progress draw request on a fixed price contract when you have more than one payment for the project. For example, assume there are to be five separate payments on the contract. Payments 1, 2, 3, and 4 would be interim or installment payments. Payment 5 five would be the final payment subject to the possibility of being paid further when the retention is owed. Use this present invoice for payments 1, 2, 3, and 4.

This assumes that your contract spells out how much is due for each installment. For example, if the contract is based on percentage complete, it might state: "20% demolition and grading, 20% foundation, 20% rough framing, 20% rough electrical and plumbing, and 20% on substantial completion." If your contract price is \$100,000.00, the first installment for demolition and grading would be \$20,000.00.

If your contract is based on set amounts that are due under a schedule of values, it might state: "\$20,000.00 demolition and grading, \$20,000.00 foundation, \$20,000.00 rough framing, \$20,000.00 rough electrical and plumbing, and \$20,000.00 on substantial completion." You would simply write in those values on the invoice for each installment.

If your contract does not spell out how much is due for each installment, the only thing you can do is multiply the contract price by the percentage complete and come up with a figure. In the example above, at the demolition and grading stage, you would simply multiply the approximate 20% complete by the contract price.

Only a general description of the work performed is required, and there is no need to specify everything that has been done or references to plans/specifications. Include materials and supplies that have been ordered, purchased, and actually delivered to the site job, even though they have not been incorporated into the project. Alternatively, you may simply wish to state: "Second Progress Draw Pursuant to the Construction Contract", or "Completion of Rough Framing", if this is how it is referred in your contract.

Deduct the retention amount (for example, 10%). If there is no retention, you can keep that blank. Change Orders or extras do not have a deduction for retention.

***Profit and overhead.*** Note there is no separate line item for profit in overhead. That is because on a fixed price or stipulated sum contract, that is totally your business and you need not divulge it. Quite simply, this is confidential. On a lump sum contract, sometimes you make a decent amount of money and sometimes you lose. But that is a gamble you take and need not disclose it to the owner. The only exception is when the schedule of values has a list of all the component's of construction and then at the end separate line items for contingencies and profit and overhead. Obviously, in those cases, you have disclosed which you are planning to make as profit. But even in those cases, the owner does not have a right to examine your books or job file and see exactly how much profit you're making.

**How to Fill out the Form:** Here is a description of how to fill out and do the calculations on this Form:

### **Current Payment Due Section**

1. Work Completed/Material Stored on Site this Period: Include all the work from your crew, laborers, and subcontractors. Also add in all equipment rental costs and all material delivered to the site, whether not incorporated into the improvement.
  
2. Change Orders Directed ("C/O's") this Period (see attached): Include all change orders that you have been told to do, whether or not they have been signed. To eliminate any disputes, attach copies of all signed and unsigned change orders. If you have not yet put your change orders in writing, this is the time to do so, and simply attach a copy. Even if unsigned, this lets the other side know what you're claiming and helps your chances later in court.
  
3. Retainage this Period: "Work Completed" means everything other than equipment rental costs and material. In other words, all work and labor performed by your crew and subcontractors. Simply multiply the retention percentage (for example 10%) by the amount you are claiming. As to equipment rental and materials, some contracts require a deduction for retention and others do not. If there is to be a deduction, simply make the calculation. If no retention is to be taken from material and equipment, simply keep it blank.
  
4. Amount Due this Invoice (1+2--3c): Simply make the additions and subtractions as indicated.
  
5. Past Due/Base Contract and C/O's: Add back in unpaid amounts on your previous billing. So, for example, if you did not receive full payment on your last invoice, you would include this amount.
  
6. **Total Due this Invoice:** This is the amount you are asking for under the current invoice.

**Contract summary.** In the section titled, "Contract Summary", you are not describing what is currently due but simply giving an overall view of how the contract is progressing. In other words, the balance is what remains to be paid on the contract. Again, there's a method to this madness. This way the owner can seldom complain they were surprised that it was costing too much, they thought the price was going to come in lower or that they did not have enough time to plan for the future payments.

**Change order summary.** The "Change Order Summary" may make the invoice longer but also has a real purpose. It constantly reminds the owner where they are in the contract reconciliation process, especially as to extras. It makes it more difficult for them to complain or for the court/arbitrator to find a defense if they have received multiple summaries

and have not objected. There is no need to describe the change orders for each period and the simplest way is to attach copies of the change orders.

***Is anything attached?*** There's no need to attach timecards, material invoices, subcontractor bids, or any of your other private records. The only thing that is recommended to be attached is copies of change orders.

***See Law Summary for more information.*** Included in this Kit is a detailed law summary of the law of payments and invoices.

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**Who Signs?:** The contractor himself/herself or anyone in your office, whether owner, manager, or other employee.

**Copies:** One signed copy for your files and one signed copy for the owner.

**Verified or Notarized?:** There is no such requirement under this particular invoice. However, especially involving architects, bank disbursement, public projects, or AIA contracts, there may be a need to certify that the amounts on the invoice are true and correct and that subs and suppliers have been paid out of the last billing. This language has been added.

**Non-Payment For Change Orders:** Should you stop work temporarily or terminate the contract if the only non-payment relates to change orders? States differ as to whether you can claim a breach of the construction contract if one extra as opposed to multiple extras are not paid. The owner will probably not be in material breach, assuming payments on the base contract are current, especially if the change order is contested and the amount is not that large. Of course, if both extras and progress draws are unpaid, the breach would be clear.

**PROGRESS BILLING INVOICE (Installment)**

TO:

FROM:

\_\_\_\_\_  
(Owner(s) Name(s))

\_\_\_\_\_  
(Contractor's Name)

\_\_\_\_\_  
(Address - No. and street)

\_\_\_\_\_  
(Address- No. and Street)

\_\_\_\_\_  
(Address - City/State/Zip)

\_\_\_\_\_  
(Address-City/State/Zip)

Project Name: \_\_\_\_\_ Sent by: \_\_\_ mail; \_\_\_ e-mail: \_\_\_\_\_ ; Fax: \_\_\_\_\_  
For the period: \_\_\_\_\_ through \_\_\_\_\_. Installment # \_\_\_\_\_ . \_\_\_ Continued on attached sheet

**General Description of Work Performed and Materials on Site Under Base Contract:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Current Payment Due**

- 1. Work Completed/Material Stored on Site this Period: \$ \_\_\_\_\_
- 2. Change Orders Directed ("C/O's") this Period (see attached): \$ \_\_\_\_\_
- 3. Retainage this Period:
  - a) \_\_\_ % X \$ \_\_\_\_\_. For Work Completed: \$ \_\_\_\_\_
  - b) \_\_\_ % X \$ \_\_\_\_\_ If applicable) For Stored Material: \$ \_\_\_\_\_
  - c) Total Retainage (3a + 3b): \$ \_\_\_\_\_
- 4. Amount Due this Invoice (1+ 2--3c): \$ \_\_\_\_\_
- 5. Past Due/Base Contract and C/O's: \$ \_\_\_\_\_
- 6. **Total Due this Invoice:** \$ \_\_\_\_\_

Payment is due on receipt. Unpaid amounts bear interest at 2% per month, starting five (5) days after receipt. The prevailing party in any collection proceeding shall be entitled to reasonable attorney's fees. The undersigned reserves all rights to additional compensation for C/O's directed and unpaid and extra work performed under protest. This is to certify the above work performed by contractor and any subs has been completed satisfactorily under industry standards, including material delivered to the site or incorporated, is currently due, and that the statements above are true to the best of our knowledge. Thank you.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Contractor)

**Contract Summary**

- 1. Original Contract: \$ \_\_\_\_\_
- 2. Deletions and deductive C/O's: \$ \_\_\_\_\_
- 3. Add C/O's to Date (C/O # \_\_\_\_\_ through # \_\_\_\_\_): \$ \_\_\_\_\_
- 4. New Revised Contract Amount (1+3-2): \$ \_\_\_\_\_
- 5. Less Previous Payments: \$ \_\_\_\_\_
- 6. Less Current Payment: \$ \_\_\_\_\_
- 7. Contract Balance, including retention (4-5+6): \$ \_\_\_\_\_

**Change Order Summary**

- 1. Previous C/O's # \_\_\_\_\_ through # \_\_\_\_\_: \$ \_\_\_\_\_
- 2. C/O's # \_\_\_\_\_ through # \_\_\_\_\_ this Invoice: \$ \_\_\_\_\_
- 3. Total C/O's to Date: \$ \_\_\_\_\_