



Monterey County Board of Supervisors

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
www.co.monterey.ca.us

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Chris Lopez, to:

Agreement No. A-12490, Amendment No. 5

a. Approve Amendment No. 5 to Agreement No. A-12490 with Michael Baker International, Inc. to: update the Pricing Sheet; extend the expiration date for one (1) additional year to June 30, 2020; and approve a not to exceed amount of \$100,000 for fiscal year (FY) 2019 - 2020 to provide on-call services associated with permit application review services subject to funding allocation (Request for Qualifications #10382);

Agreement No. A-12548, Amendment No. 4

b. Approve Amendment No. 4 to Agreement No. A-12548 with Rincon Consultants to: update the Pricing Sheet; extend the expiration date for one (1) additional year to June 30, 2020; and approve a not to exceed amount of \$100,000 for fiscal year (FY) 2019 - 2020 to provide on-call services associated with permit application review services subject to funding allocation and

c. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute Amendment No. 5 to Agreement No. A-12490 and Amendment No. 4 to Agreement No. A-12548.

PASSED AND ADOPTED on this 18th day of June 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Lopez, Phillips, Parker and Adams

NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting June 18, 2019.

Dated: June 19, 2019
File ID: A 19-223
Agenda Item No.: 75

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

Valerie Ralph, Clerk of the Board

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS
1441 Schilling Place, South 2nd Floor (831)755-4800
Salinas, California 93901-4527 www.co.monterey.ca.us/rma

MEMORANDUM

Date: June 28, 2019

To: Valerie Ralph
Clerk of the Board of Supervisors

From: Dalia M. Mariscal-Martinez *DMM*
Management Analyst II

Subject: AMENDMENT NO. 5 TO AGREEMENT NO. A-12490 BETWEEN MICHAEL BAKER INTERNATIONAL, INC. AND THE COUNTY OF MONTEREY FOR PERMIT APPLICATION REVIEW SERVICES (RFQ #10382)

Please find attached and for your records, an executed original of Amendment No. 5 to Agreement No. A-12490 between Michael Baker International, Inc. and the County of Monterey for the above referenced services. Amendment No. 5 was presented and approved by the County of Monterey Board of Supervisors on June 18, 2019.

If you have any questions, please contact Shelley Dickinson at Ext. #4832. Thank you.

DMM/sd

Attachments: Executed Amendment No. 5 to Agreement – *1 Original*
Board Order for Amendment No. 5 to the Agreement, Passed and Adopted on June 18, 2019 - *1 Copy Attached to Original*

**AMENDMENT NO. 5
TO AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
MICHAEL BAKER INTERNATIONAL, INC.**

THIS AMENDMENT NO. 5 to Agreement No. A-12490 between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Michael Baker International, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

WHEREAS, CONTRACTOR entered into Agreement No. A-12490 with County on July 16, 2013 (hereinafter, "Agreement") to provide permit application review services (hereinafter, "services") through July 16, 2016 with the option to extend the Agreement for two (2) additional one (1) year period(s), for an amount not to exceed \$100,000 per fiscal year (FY) for a total amount not to exceed \$300,000 for the initial three (3) year term (FY 2013-14, FY 2014-15, and FY 2015-16) in accordance with the terms and conditions of the Agreement; and

WHEREAS, Agreement was amended by the Parties on August 31, 2015 (hereinafter, "Amendment No. 1") to revise the CONTRACTOR's legal name with no extension to the term and with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on June 28, 2016 (hereinafter, "Amendment No. 2", including Attachment A-1 – Revised Pricing Sheet, effective July 17, 2016) to extend the term for one (1) additional year through July 16, 2017, to update the Pricing Sheet, and to increase the amount by \$500,000 for the cost of services during that period (FY 2016-17) which resulted in a total not to exceed amount of \$800,000; and

WHEREAS, Agreement was amended by the Parties on July 25, 2017 (hereinafter, "Amendment No. 3") to extend the term for one (1) additional year through July 16, 2018 and to increase the amount by \$300,000 for the cost for services during that period (FY 2017-18) which resulted in a total not to exceed amount of \$1,100,000; and

WHEREAS, Agreement was amended by the Parties on July 13, 2018 (hereinafter, "Amendment No. 4") to update the provisions, to extend the term for one (1) additional year through June 30, 2019, and to increase the amount by \$100,000 for the cost for services during that period (FY 2018-19) which resulted in a total not to exceed amount of \$1,200,000; and

WHEREAS, County has a continued need for services beyond the anticipated five (5) year Agreement term allowed per Request for Qualifications (RFQ) #10382; and

WHEREAS, CONTRACTOR's Revised Pricing Sheet, effective July 17, 2016, requires an update effective July 1, 2019, in accordance with Attachment A-2, Revised Pricing Sheet, which is attached and incorporated by this reference; and

WHEREAS, additional time and funding are necessary to allow CONTRACTOR to continue to provide services and to allow County staff to continue to prepare and process a new RFQ; and

WHEREAS, the Parties wish to further amend the Agreement to extend the term for one (1) additional year to June 30, 2020, to increase the cost for services by \$100,000 for FY 2019-20 for a total amount not to exceed \$1,300,000, and to update the Pricing Sheet to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 5.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. Amend Paragraph 1.1 under Section 1.0, "Performance of Agreement", to add the following:

Attachment A-2 – Revised Pricing Sheet

2. Amend Paragraph 3.1 under Section 3.0, "Term of Agreement", to read as follows:

The term of the AGREEMENT will be from July 16, 2013 to June 30, 2020.

3. Amend Paragraph 4.1 under Section 4.0, "Compensation and Payments", to read as follows:

It is mutually understood and agreed by both Parties that the CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto as Attachments A, A-1 and A-2. The total amount of this AGREEMENT shall not exceed \$100,000 per fiscal year (FY) for the initial three (3) year term (FY 2013-14, FY 2014-15 and FY 2015-16) of this AGREEMENT. Additionally, the total amount of this AGREEMENT shall not exceed \$500,000 for the first additional one (1) year period extension (FY 2016-17), shall not exceed \$300,000 for the second additional one (1) year period extension (FY 2017-18), shall not exceed \$100,000 for the third additional approximate one (1) year period extension (FY 2018-19) beyond the initial term, and shall not exceed \$100,000 for the fourth additional one (1) year period extension beyond the initial term for a total AGREEMENT amount not to exceed \$1,300,000.

4. Amend Paragraph 5.1 under Section 5.0, "Invoices and Purchase Orders", to read as follows:

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Section 4.0, "Compensation and Payments", and Section 5.0, "Invoices and Purchase Orders", of the Agreement. All invoices shall reference the Multi-Year Agreement (MYA) number #3000*940, Project name and associated Purchase Order number, and an original hardcopy shall be sent to the following address or via email to RMA-Finance-AP-GP@co.monterey.ca.us:

County of Monterey
Resource Management Agency (RMA) – Finance Division
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

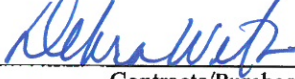
Any questions pertaining to invoices under this Agreement should be directed to the RMA Finance Division at (831) 755-4800 or via email to: RMA-Finance-AP-GP@co.monterey.ca.us.

5. All other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged and in full force.
6. This Amendment No. 5 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
7. The recitals to this Amendment No. 5, are incorporated into the Agreement and this Amendment No. 5.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 5 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: 
Contracts/Purchasing Officer

Michael Baker International, Inc.
Contractor's Business Name

Date: June 25, 2019

By: 
(Signature of Chair, President or Vice President)

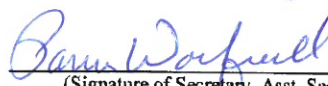
Approved as to Form and Legality
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

Its: Thomas G. Tracy, Associate Vice President
(Print Name and Title)

By: 
Brian P. Briggs
Deputy County Counsel

Date: 5-7-19

Date: 5-13-19

By: 
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Approved as to Fiscal Provisions

By: 
Auditor/Controller

Its: Pam Warfield, Assistant Secretary
(Print Name and Title)

Date: 5-13-19

Date: 5-7-2019

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

By: _____

Name: _____

Title: _____

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

ATTACHMENT A-2 – REVISED PRICING SHEET

Effective July 1, 2019

CONTRACTOR'S PRICING SHEET

Service:	Review Fee:
Permit Review (regular)	\$5,115
Permit Review (complex)	\$10,230
Initial Study	\$5,115 - \$15,500

Service:	Hourly Rate:
Permit Review (regular)	\$155
Permit Review (complex)	\$155
Initial Study	\$155

CONTRACTOR, having read and understood all proposal information, hereby submits hourly rates. It is understood that the basic design of each particular type of facility can be duplicated as the situation permits. It is also understood that a final fee may be negotiated with the CONTRACTOR for the required services.

Reimbursable Items	Cost
Copy/Printing Vendors	At Cost plus 10%
Subconsultants	At Cost plus 10%



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
08/24/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Pittsburgh PA Office EQT Plaza ~ Suite 2700 625 Liberty Avenue Pittsburgh PA 15222-3110 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105		
	E-MAIL ADDRESS:		
INSURED Michael Baker International, Inc. 2729 Prospect Park Drive Suite 220 Rancho Cordova CA 95670 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Liberty Mutual Fire Ins Co		23035
	INSURER B: Liberty Insurance Corporation		42404
	INSURER C: Lloyd's Syndicate No. 2623		AA1128623
	INSURER D: XL Insurance America Inc		24554
	INSURER E:		
INSURER F:			

COVERAGES **CERTIFICATE NUMBER: 570072755201** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

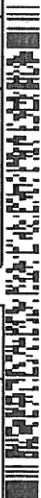
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			TB2681004145718	08/30/2018	08/30/2019	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMPI/OP AGG	\$4,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			AS2-681-004145-728	08/30/2018	08/30/2019	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			US00079952LI18A	08/30/2018	08/30/2019	EACH OCCURRENCE	\$10,000,000
							AGGREGATE	\$10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WA768D004145778 AOS	08/30/2018	08/30/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
B				WC7681004145788 WI	08/30/2018	08/30/2019	E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000
C	E&O-PL-Primary			PSDEF1800460 Professional & Pollution	08/31/2018	08/30/2019	Per Claim Aggregate	\$5,000,000 \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
For Named Insured Only: Attn: Pam warfield. RE: Project Name: All projects on file with Insured. County of Monterey, its officers, agents and employees are included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies. General Liability policy evidenced herein is Primary and Non-Contributory to other insurance available to Additional Insured, but only in accordance with the policy's provisions. A waiver of Subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the General Liability and Automobile Liability policies. Should General Liability, Automobile Liability, Professional Liability and workers' Compensation policies be cancelled before the expiration date thereof, the policy provisions will govern how notice of cancellation may be delivered

CERTIFICATE HOLDER County of Monterey Contracts/Purchasing 1441 Schilling Place, South 2nd Floor Salinas CA 93901 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Central, Inc.</i>

Holder Identifier : ADSBECFH

Certificate No : 570072755201



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

SCHEDULE

**Name Of Additional Insured Person(s)
Or Organization(s):**

Location(s) Of Covered Operations

County of Monterey, its officers, agents and employees

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Policy Number TB2-681-004145-718
Issued by Liberty Mutual Fire Insurance Co.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OTHER INSURANCE AMENDMENT – SCHEDULED ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART

If you are obligated under a written agreement to provide liability insurance on a primary, excess, contingent, or any other basis for any person or organization shown in the Schedule of this endorsement that qualifies as an additional insured on this policy, this policy will apply solely on the basis required by such written agreement and Paragraph 4. Other Insurance of Section IV - Conditions will not apply. If the applicable written agreement does not specify on what basis the liability insurance will apply, the provisions of Paragraph 4. Other Insurance of Section IV - Conditions will govern. However, this insurance is excess over any other insurance available to the additional insured for which it is also covered as an additional insured by attachment of an endorsement to another policy providing coverage for the same "occurrence", claim or "suit".

Schedule

Person or Organization:

All persons or organizations with whom you have entered into a written contract or agreement, prior to an "occurrence" or offense, to provide additional insured status.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name Of Person(s) Or Organization(s):

County of Monterey, its officers, agents and employees are included as Additional Insureds

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** - Covered Autos Coverages of the Auto Dealers Coverage Form.

Policy Number: AS2-681-004145-728
Issued by: Liberty Mutual Fire Insurance Co.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED - NONCONTRIBUTING

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIERS COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage form.

Schedule

Name of Person(s) or Organizations(s):

Any person or organization whom you have agreed in writing to add as an additional insured, but only to coverage and minimum limits of insurance required by the written agreement, and in no event to exceed either the scope of coverage or the limits of insurance provided in this policy.

Regarding Designated Contract or Project:

Each person or organization shown in the Schedule of this endorsement is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

The following is added to the Other Insurance Condition:

If you have agreed in a written agreement that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the agreement was executed prior to the "bodily injury" or "property damage", then this insurance will be primary and we will not seek contribution from such insurance.