

September 14, 2026

Via E-Mail (BOE.Clerk@baltimorecity.gov)

Board of Estimates
City of Baltimore
100 N. Holliday Street
Baltimore, MD 21202

Re: Statement of Opposition of Revenue Solutions, Inc. Against the Proposed Termination for Default of Cooperative Purchasing Agreement #SCON-005311; Board of Estimates Agenda SB-26-13377, Meeting of September 16, 2026

Board of Estimates:

Revenue Solutions, Inc. (“RSI”) timely submits this Statement of Opposition under the Board of Estimates (the “Board”) Regulations,¹ in response to the City’s August 24, 2026 Notice of Termination for Default directing RSI to submit a written opposition to the Clerk of the Board as an appeal of the termination.² As the contractor under Agreement #SCON-005311 (the “Agreement”), RSI is directly affected by the proposed default termination and has standing before the Board.³ RSI requests that the Board decline to approve the termination. Alternatively, RSI requests that the Board defer consideration so the City and RSI can hold a joint planning session to clarify the Agreement’s scope and schedule, establish a completion plan, and execute the required change order. RSI and its counsel will appear at the meeting to present and defend this Statement.

EXECUTIVE SUMMARY

Since 2024, RSI has performed under Agreement #SCON-005311 on TaxSMART, the City’s multi-year tax software modernization project. To date, RSI has made significant progress on the project: RSI has delivered or submitted for City testing the substantial majority of the originally scoped requirements and interfaces, converted roughly 80% of legacy data to a testing-ready state, and invested more than 35,000 hours on this project. RSI has also established the core infrastructure necessary to support the City’s modernized tax platform. RSI achieved that progress despite the City’s delays, including the lack of City’s final clarification and alignment on project scope and schedule for more than nine months, as well as delays in City review and approval of key features and interfaces required for

¹ Baltimore Board of Estimates Regulations § 27.01.05.01.B(1) (notice a Statement of Opposition shall be given “no later than noon on the Tuesday immediately before the Board meeting during which the item will be considered”).

² Ex. A, Termination Notice.

³ Baltimore Board of Estimates Regulations § 27.01.05.02.A(3)

development. These unresolved dependencies have affected RSI's ability to advance major portions of the project as originally planned. The City now seeks the drastic remedy of default termination even though it would not produce a working tax system; it would force reprocurement, discard substantial progress, and impose additional costs and delay on the City and its taxpayers.

Successful completion of the TaxSMART project requires scope and schedule clarification, not a default termination. In October 2025, the City requested a six-month extension of the User Acceptance Testing ("UAT") period, with the understanding that the overall project schedule would shift accordingly. Both parties acknowledged that, as a result of the extended UAT period and the remaining Release 1 workload, the previously planned April 2026 go-live date was no longer achievable. In response, RSI agreed to prepare a Change Order to formally document the revised project timeline and, at the City's direction, incorporate 19 additional mandatory enhancements into the initial Release 1 scope, including 16 new interfaces required for go-live. RSI memorialized that request in CO-005.

For the next nine months, the City directed RSI to perform under CO-005, participated in planning for the added work, and measured progress against the extended schedule. However, the City never signed CO-005, leaving the governing scope and schedule unresolved despite RSI's repeated requests. The City also delayed the feature and interface approvals required for development, then attributed the resulting schedule pressure to RSI. When RSI requested a joint planning session to address the City-caused delays, the City responded after weeks of silence with a Cure Notice.

During the Cure discussions, the City imposed demands that neither the Agreement nor the Cure Notice required, including a complete roster and resumes for RSI's project employees, \$1.4 million in cash already credited to the City, a 5% retainage fee, and a comprehensive Gantt-style schedule chart. RSI nevertheless accommodated the monetary demands, provided key personnel information, and explained that it could produce a reliable schedule once the City clarified the scope. The City ignored those concessions and requests and terminated RSI based on speculation that a planning session would not produce a finished tax system.

Default termination is a drastic remedy with significant legal and operational consequences.⁴ The City bears the burden of proving that it is warranted; schedule delay alone is insufficient, and the entire record must support termination by at least the weight of the evidence.⁵ The record cannot sustain that sanction. RSI substantially performed by developing and delivering functionalities under both the original scope and the expanded scope the City requested in CO-005. Any delay identified in the Cure Notice or Termination Notice resulted from the City's scope and schedule changes, its refusal to clarify them, and its withholding of required approvals. The City also violated its implied obligation of good faith and fair

⁴ See Maryland Procurement Manual § 8.2.6.

⁵ *Driggs Corp. v. Md. Aviation Admin.*, 348 Md. 389, 704 A.2d 433 (1998).

dealing by refusing to clarify the scope and conditioning Cure discussions on concessions not required by the Agreement or other authority. Default termination would not serve the City's interests: it would squander substantial value already delivered, and impose reprocurement costs. Further, if any approved default termination is converted on appeal to a termination for convenience, the City would be required to pay termination costs.⁶

RSI's substantial performance and good-faith conduct despite the lack of scope and schedule clarification and approval delays make default termination unnecessary. To obtain a working tax system within a reasonable time, the City only needs to clarify the scope and engage in a good-faith planning session with RSI. RSI therefore requests that the Board decline to approve the proposed default termination of the Agreement or defer consideration and recommend that the City engage in a joint planning session with RSI to clarify scope and schedule, secure scope approval, establish a realistic completion path, and execute the required change order. That approach preserves the value of two and a half years of collaborative work and avoids the cost and delay of reprocurement.

I. INTRODUCTION

Since 2024, RSI has performed under the Agreement to deliver a modernized tax platform to the City under the TaxSMART project. The City now seeks default termination based on the original schedule even though it requested an extension and expanded scope, directed performance under CO-005 for more than nine months, and never formalized that change. The City also withheld approvals needed for development and conditioned cure discussions on demands outside the Agreement. Given RSI's substantial performance under the CO-005 scope, the City has not established a material breach. Any delay reflects City-directed changes and City-caused impediments, and the termination decision violates the implied obligation of good faith and fair dealing. Moreover, a default termination also would not advance the City's stated objective to timely modernize the tax system. Therefore, the Board should decline to approve the default termination or defer consideration and direct the City to clarify the scope and schedule so RSI can complete the project.

II. BACKGROUND

A. The Agreement and Executed Change Orders

The Agreement is a cooperative purchasing agreement leveraging the Baltimore County Contract #220 for Tax Software System, Real and Personal Property, which was awarded to RSI on January 4, 2021. Using the Baltimore County Contract, the City entered into the Agreement with RSI in the amount

⁶ Baltimore Procurement Regulations § I.N.3.

of \$11,862,275 for a tax software modernization project. The Board approved the Agreement on March 20, 2024, with the performance period from April 1, 2024 to January 3, 2026.⁷

Since the initial award, the City executed three Change Orders (“COs”).⁸ CO-001 removed the Financial Evaluation Services deliverable and release \$95,878 back into the contract as scope contingency.⁹ CO-003R made minor changes to the project scope.¹⁰ CO-004 transitioned the software platform provided under the project from revX to Government Premier; in connection with the transition, RSI gave the city a \$1,404,205 credit for the cancelled portion of the revX subscription, in addition to a \$250,000 credit,¹¹ to the City for future COs. CO-004 further revised the implementation schedule, extending the Project Acceptance date to April 26, 2027.¹² The Board recognized and approved the COs on July 2, 2025 as the First Amendment to Cooperative Purchasing Agreement, which also incorporated Revision 11 of the Scope of Work (“SOW”) document dated June 4, 2025.¹³ The Board later issued the Second Amendment to Cooperative Purchasing Agreement dated February 4, 2026, to extend the contract term to January 2027 without making amendments to project scope or schedule.¹⁴

B. Original Scope and Schedule Under CO-004

The Agreement’s objective is to modernize the City’s tax software using RSI’s Government Premier software service. The project is divided into three Releases: Release 1 covers real and personal property; Release 2 covers miscellaneous business taxes; and Release 3 covers personal property, residential, hotel, and parking taxes.¹⁵ Release 1 is at issue here.

Under the Agreement’s Agile software development methodology, each Release proceeds iteratively through Program Increments (“PIs”) composed of time-boxed Sprints.¹⁶ Each PI begins with a planning session to assign features and related work to Sprints, subject to City approval. RSI then develops the approved features, which proceed to review, including User Acceptance Tests (“UATs”) and Model Office Testing.

⁷ Ex. B, Original Cooperative Purchasing Agreement; *see* Ex. C, Baltimore County Contract.

⁸ The operative version of the SOW identifies CO-002 for “Discovery schedule realignment,” but that change order was never executed by the parties. *See* Ex. D, SOW Rev. 11 at ii (pdf 2).

⁹ Ex. D, SOW Rev. 11 at ii (pdf 2); Ex. E, CO-001 Change Order Form.

¹⁰ Ex. F, First Am. to Cooperative Purchasing Agreement; Ex. G, CO-003R Change Order Form.

¹¹ A portion of this credit was used to fund the revised scope under CO-003R. Ex. G, CO-003R Change Order Form.

¹² Ex. F, First Am. to Cooperative Purchasing Agreement; Ex. H, CO-004 Change Order Form.

¹³ Ex. F, First Am. to Cooperative Purchasing Agreement; Ex. D, SOW Rev. 11.

¹⁴ Ex. I, Second Am. to Cooperative Purchasing Agreement.

¹⁵ Ex. F, SOW Rev. 11 at 1-3 (pdf 8-10).

¹⁶ *Id.* at 24 (pdf 29).

Project deliverables include features such as interfaces, which are functional capabilities in Government Premier that connect to other tax databases. RSI leads interface definition, backlog creation, prioritization, scheduling, sprint testing, and defect correction.¹⁷ The City must provide the information needed to complete development. Most importantly, it is the City's responsibility to test the interfaces during UAT and Model Office Testing.¹⁸

Under CO-004, Release 1 originally consisted of three PIs. To complete Release 1, RSI was originally required to provide up to 15 interfaces, and the SOW provided that a Change Request must be made to add any interface that is later identified as necessary.¹⁹

The original Release 1 go-live date under CO-004 was April 13, 2026.²⁰ The SOW nevertheless provides that the final schedule may change: "The final schedule will be documented in the Project Schedule Deliverable *and may include mutually agreed to changes . . .*" It also states that the final schedule "will be developed during the Planning stage and documented in the mutually agreed to Project Schedule."²¹ The CO-004 Change Order Form further states that the schedule depends on the City meeting its SOW obligations and that delays caused by the City will not be borne by RSI:

The schedule is contingent on the City meeting all their obligations in the Statement of Work. If, for any reason the City is unable to approve this CO or meet their obligations in the Statement of Work, the schedule may be delayed. Any costs associated with the City's delay, will not be borne by RSI.^[22]

C. The City's Request to Extend Schedule and Expand Scope for Release 1 Through CO-005

On October 10, 2025, at a monthly Executive Leadership meeting, the City requested a six-month extension of the UAT period, with the understanding that the overall project schedule would shift accordingly. Both parties acknowledged that, as a result of the extended UAT period and the remaining Release 1 workload, the previously planned April 2026 go-live date was no longer achievable. In response, RSI agreed to prepare a Change Order to formally document the revised project timeline and, at the City's

¹⁷ *Id.* at 8 (pdf 13) (§ 6.3.2).

¹⁸ *Id.* at 8, 12 (pdf 13, 17) (§§ 6.3.3, 6.9.3).

¹⁹ *Id.* at 7 (pdf 12) (§ 6.3.1).

²⁰ *Id.* at 3 (pdf 8) (§ 4, Table 1).

²¹ *Id.* at 4 (pdf 9) (§ 4); *id.* at 17-18 (pdf 22-23) (§ 7.2) (establishing that RSI will document the schedule agreed to during the project planning stage in the Project Schedule deliverable).

²² Ex. H, CO-004 Change Order Form at 1.

direction, incorporate 19 additional mandatory enhancements into the initial Release 1 scope, including 16 new interfaces required for go-live.

On November 5, 2025, the parties met to discuss the City's requested scope and schedule changes. The City asked RSI to "[k]eep the momentum even though we know we will not hit April" and asked to meet in early December to address schedule and cost impacts.²³ At the December 5, 2025 Revised Schedule Review, the parties agreed to add another PI for the roughly 100 remaining features to accommodate the City's UAT team and target an October 2026 go-live for Release 1.²⁴ They also agreed that "[s]trict adherence to the UAT timeline is critical" and that "[a]ll PI features must be fully reviewed and approved by 12/23/2025." The stated next steps required RSI to submit the formal change request and the City to "[r]eview and approve all remaining features by 12/23/2025 to support PI planning and development readiness."²⁵

On December 19, 2025, RSI delivered the CO-005 Change Order Form. At the City's direction, CO-005 extended the schedule by six months to an October 15, 2026 Go-Live date,²⁶ added 19 additional mandatory enhancements including 16 interfaces to Release 1,²⁷ and split the remaining PI 3 performance segment into two PIs by creating a new PI 4.²⁸ The City has never executed CO-005, leaving it outstanding for more than nine months as of the Termination Notice.

D. The City's Refusal to Formalize CO-005 and Direction to Perform Under CO-005 Scope and Schedule

Because the City never signed CO-005, the project's scope and schedule remained ambiguous from December 2025 through the Termination Notice. RSI repeatedly warned that the ambiguity threatened completion, yet the City directed RSI to perform under the unsigned CO-005 scope and schedule and participated in that performance.

RSI repeatedly sought clarification. At the February 20, 2026 biweekly meeting, the parties agreed to continue the original scope together with the CO-005 additions, assuming all were required for Go-Live. After that meeting, RSI asked the City to clarify the scope and warned that the ambiguity created project risk. The City did not respond to this request.

²³ Ex. J, Nov. 5, 2025 Email from City to RSI.

²⁴ Ex. K, RSI BCIT TAX SMART Release 1 Revised Scheule Review Slides.

²⁵ *Id.* at 4.

²⁶ Ex. L, CO-005 Updated Schedule at 4.

²⁷ Ex. M, CO-005 Change Order Form at 2.

²⁸ *Id.* at 5; Ex. L, CO-005 Updated Schedule.

Nevertheless, the City continued to operate under CO-005. On March 24, 2026, the City sent “City requests” organized around April, June, and December 2026 plan as agenda items to discuss during the upcoming executive meeting.²⁹ The City also participated in planning the added CO-005 work. On April 7-8, 2026, the City joined a two-day planning session for PI 4, the performance segment added under CO-005 to address the backlog and new mandatory interfaces.³⁰

On May 6, 2026, after RSI again asked the City to clarify the schedule and formalize CO-005,³¹ the City said it was still reviewing and directed RSI “to continue to work through the PI4 sprints as currently defined as [the City] align[s] schedules and resources.”³² On May 15, 2026, RSI renewed the request for clarification, warning that the lack of a formal Change Order and approvals increased the risk of misaligned expectations and legal risks.³³ Again, the City did not respond to the request for scope clarification.

E. The City’s Delays in Providing Approvals Required for Project Progress

The City not only failed to formalize the scope and schedule it had requested; it also delayed the approvals RSI needed to make progress under Release 1.

When the parties agreed to the revised CO-005 schedule on December 5, 2025, the City agreed to approve the features and interfaces planned for the remainder of the schedule by December 23, 2025. It missed that deadline and continued to lag for months. By January 30, 2026, it had approved only 45 of 54 PI 3 features and 10 of 46 PI 4 features.

RSI warned the City early on that the approval delays were already affecting the schedule. On January 30, 2026, RSI wrote that unapproved items “are now past their scheduled start dates, making it no longer feasible to include them in the current sprint plan,” that “workload is becoming concentrated toward the end of the schedule,” and that there were “dependencies that prevent [work] from being started earlier.”³⁴ The City did not resolve the backlog. Instead, it added 14 new items, requested design changes to approved items, and returned previously approved features to review in February 2026—outside the forward-moving approval process. The March 31, 2026 weekly status report still identified delayed feature

²⁹ Ex. N, March 24, 2026 City Email to RSI.

³⁰ Ex. O, Apr. 9, 2026 City Email to RSI.

³¹ Ex. P, May 6, 2026 RSI Email to City.

³² Ex. P, May 7, 2026 City Email to RSI.

³³ Ex. P, May 15, 2026 RSI Email to City.

³⁴ Ex. Q, Jan. 30, 2026 RSI Emails to City.

approvals as an “Open” risk to the Release 1 schedule,³⁵ and RSI continued seeking approval of more than a dozen features as late as April 21, 2026.³⁶

The delays became schedule bottlenecks. Unapproved features could not start in their scheduled Sprints, so they rolled into later Sprints, overloaded those Sprints, and concentrated UAT at the end of the schedule. In March 2026, City users asked to delay Sprint 6 of PI 3 because the UAT window could not accommodate the backlog; RSI extended the window by two weeks and added testing resources and sprints to mitigate the overflow.

F. The City’s Concerns Regarding Project Schedule and Issuance of Cure and Default Notices

On April 7-8, 2026, RSI and the City held a joint planning session for PI 4 under the CO-005 scope and schedule. After the City raised delivery schedule concerns, RSI shared a revised plan and its approach to meeting it.³⁷ Separately, RSI further explained that a realistic schedule required the City to clarify the scope of the unsigned CO-005,³⁸ as well as the City’s updated estimates for UAT, approvals, and other City tasks.³⁹

Rather than provide those estimates, the City sent an email on May 15, 2026 raising concerns about schedule adherence, demo performance, interface-testing access, the test environment, error handling, and operational readiness. The City nevertheless stated that it was “committed to working through this together and is available to schedule dedicated time to align on a path forward.”⁴⁰

RSI accepted the City’s invitation and proposed a joint schedule-planning workshop to reassess the project and establish a realistic schedule. However, despite repeated follow-ups over the following weeks, the City provided no further information.⁴¹

After two months of silence, the City abruptly issued the Cure Notice on July 15, 2026, signed by the Chief Procurement Officer. The Notice declared RSI “in default for failure to provide a tax software system for real and personal property, per the terms of Contract #SCON-005311,” and gave RSI 30 days

³⁵ Ex. R, Excerpt from March 31, 2026 Weekly Status Report.

³⁶ Ex. S, Apr. 21, 2026 RSI Email to City.

³⁷ Ex. T, April 22, 2026 RSI Release 1 Schedule Plan.

³⁸ Ex. P, May 15, 2026 RSI Email to City.

³⁹ Ex. O, April 10, 2026 RSI Email to City.

⁴⁰ Ex. U, May 15, 2026 City Email to RSI.

⁴¹ Ex. U, May 29, 2026 RSI Email to City.

to cure.⁴² It identified two purported Items of Noncompliance: RSI's failure to meet CO-004 deadlines and its alleged failure to deliver "a single functional interface that includes all required components."⁴³

RSI responded on July 21, 2026, denying default and explaining that it had performed in good faith under the Agreement. RSI explained that the original CO-004 schedule had changed at the City's request, that the City's failure to provide timely approvals and contractual documentation contributed to any delay, and that RSI had substantially delivered all but one interface under CO-004 and two of the 16 interfaces added under CO-005. RSI also proposed the planning session to clarify the schedule and cure the alleged default.⁴⁴

On July 24, 2026, the City requested a meeting with RSI to better understand the proposed agenda and objectives for the three-day joint planning session that had been under discussion since May. On July 29, 2026 RSI presented a high-level agenda and committed to working collaboratively with the City to further develop and refine the agenda as necessary. RSI proposed a three-day session to walk away with:

- Confirm the testing strategy, UAT approach, and City resource commitments;
- Establish a jointly committed project schedule with agreed milestones and dates; and
- Define a realistic, achievable, and mutually committed path to go-live.

Rather than moving forward with planning the session, the City said that, before discussing the planning session RSI had to provide:

- Complete listing of all RSI employees on project, resumes provided, their role on the project, and the number of hours per week dedicated to project;
- Comprehensive timeline, in Gantt chart format, including interdependences, for get to green and project completion, incorporating sufficient testing timeline and go-live support (i.e. transition from mainframe);
- Plan to improve quality of delivered user stories, test scenarios, features, etc.; plan to burn down bug backlog; and remove blockers including, but not limited to, access provisioning, SQL access, and JAMS training;
- Integration testing plan and incorporation into broader plan (Note that the transfer of responsibility for integrations to RSI during warranty period does not mitigate the need to first build and test those integrations);
- Return of \$1.4M to City of Baltimore for RevX subscription;

⁴² Ex. V, Cure Notice.

⁴³ *Id.*

⁴⁴ Ex. W, July 21, 2026 RSI Response to Cure Notice.

- Retainage of 5% for the project, to be delivered upon project completion.^[45]

On August 4, 2026, RSI accommodated nearly every City demand. RSI provided key personnel lists and resumes even though the Agreement did not require them. RSI explained that it could not produce a reliable integrated schedule until the City clarified whether CO-004 or CO-005 controlled, and offered to provide the schedule promptly after clarification. RSI also noted the absence of critical defects and reaffirmed its commitment to resolve all critical defects before go-live; offered all necessary JAMS support for UAT even though JAMS training and operational handover were outside the current interface-development and testing scope; agreed to discuss converting the \$1.4 million RevX credit into a reduction of total contract value; and accepted 5% retainage.⁴⁶

On August 10, 2026, the City stated that it “understand[s] at this time RSI would prefer not to provide more detailed schedules or dependencies charts, or full listing of all assigned personnel on the project.”⁴⁷ RSI again explained that it was ready to prepare the schedule chart once the City clarified the project scope.⁴⁸

The City did not respond. On August 24, 2026, it issued the Termination Notice, effective that day subject to Board approval. The City said RSI “failed to satisfactorily produce” the requested documentation and therefore “is of the opinion the planning session would not have resulted in the City having a working tax system by the end of the thirty (30) day cure period or even by the end of the Agreement.”⁴⁹

III. ARGUMENT

A. The City Cannot Establish the Material Breach Required for Default Termination Under the Agreement or Applicable Law

The City alleges that RSI failed to meet the delivery schedule and has not provided the required interfaces,⁵⁰ but neither allegation establishes the material breach required for default termination. RSI substantially performed under the changed schedule the City requested, agreed to, and enforced for nine months, and delivered most of the work it was asked to deliver despite the unresolved scope. The City’s “no functional interface” allegation measures the City’s testing obligations rather than RSI’s delivery, and

⁴⁵ Ex. X, July 29, 2026 City Cure Discussion Email.

⁴⁶ Ex. Y, Aug. 4, 2026 RSI Cure Notice Discussion Letter.

⁴⁷ Ex. Z, Aug. 10, 2026 City Cure Notice Discussion Email to RSI.

⁴⁸ Ex. X, Aug. 10, 2026 RSI Cure Notice Discussion Email to City.

⁴⁹ Ex. A, Termination Notice.

⁵⁰ *Id.*.

cannot establish a material breach. The record shows not a contractor in default, but a project stalled by the City's failure to formalize the scope change it initiated.

The City Procurement Regulations and the terms of the Agreement both require a material breach to terminate a contractor for default. The City Procurement Regulations provide that "[i]f the contractor materially breaches the contract, the City, at its option, may cancel in whole or in part work under the contract."⁵¹ The Agreement also defines "Default" as the occurrence in which "the services and/or scope of work hereunder are not performed in good faith and in accordance with the provisions of this Agreement."⁵² Under Maryland law, a breach is material only where it goes to the essence of the bargain and substantially defeats the purpose for which the contract was made.⁵³ Mere schedule delay alone is insufficient, and the entire record must support material breach by at least the weight of the evidence.⁵⁴ The analysis weighs the ratio of performance rendered to performance outstanding, the degree to which the contract's purpose has been frustrated, the willfulness of the default, and the extent to which the aggrieved party has already received the substantial benefit of the promised performance.⁵⁵

1. RSI's Substantial Performance and the City's Retained Benefit Defeat Any Claim of Material Breach.

The Cure Notice, whose reasoning the Termination Notice adopts, claims that "RSI has not delivered a single functional interface." That claim is false. CO-004 required 14 Release 1 interfaces; the City then directed RSI to add 16 more, and RSI complied despite the City's failure to formalize the expanded scope.⁵⁶ As of the Termination Notice, only one of the 14 original interfaces remained with RSI for development: eight were pending City testing, two awaited review by City subject-matter experts, and three awaited City feature approval before development. RSI had also delivered two of the 16 added interfaces for City testing. Overall, RSI had completed approximately 60% of Release 1 deliverables, made 41% of functional features available, converted roughly 80% of legacy data to a ready state, and invested more than 35,000 hours in the project. RSI has also established the core infrastructure necessary to support the City's modernized tax platform. Given the expanded scope, the uncertainty created by the City's failure to clarify the revised scope and schedule, and the City's failure to provide timely review, approvals, and testing,⁵⁷ that progress demonstrates substantial performance, not material breach. As RSI

⁵¹ Procurement Regulations at § I.N.3.a.

⁵² Baltimore County Contract § 7.3.

⁵³ *Traylor v. Grafton*, 273 Md. 649, 687 (1975); *Dialist Co. v. Pulford*, 42 Md. App. 173, 178 (1979).

⁵⁴ *Driggs Corp. v. Md. Aviation Admin.*, 348 Md. 389, 704 A.2d 433 (1998).

⁵⁵ *Barufaldi v. Ocean City Chamber of Commerce*, 196 Md. App. 1, 26-27 (2010).

⁵⁶ Ex. M, CO-005 Change Order Form.

⁵⁷ See III.C, *infra*.

repeatedly told the City after it requested CO-005 in December 2025, clarifying the scope would enable completion within a reasonable time.

The City also alleges that no interface includes the “required components as set forth above,” referring to RSI’s interface-delivery responsibilities under Section 6.3.2:

- Scheduling and leading Discovery workshops to elaborate on the attributes of the in-scope interfaces
- Creating the interface backlog
- Prioritizing and scheduling interface configuration and testing as part of the Project Increment Work Plan
- Testing the interfaces during the sprints
- Correcting configuration defects

For interfaces already delivered for review or testing, RSI met those requirements. The City cannot identify any requirement RSI failed to meet.⁵⁸ RSI therefore did not materially breach the Agreement’s interface-delivery requirement, and a default termination on that ground would be improper.

2. The City’s Schedule Allegation Relies on a Schedule It Superseded and Acknowledged Could Not Be Met.

The Cure Notice measures RSI against the old SOW schedule and asserts that RSI “has not met a single finish date.”⁵⁹ That schedule contemplated Release 1 go-live on April 13, 2026, but the City requested and the parties agreed to a six-month extension under CO-005 and later continued to direct RSI to conduct additional work. Until the Cure Notice, the City had expressed its understanding that RSI would perform the extended schedule. The City cannot revise the schedule, operate under the revision for nine months, and then declare default by invoking the abandoned schedule. Maryland law forecloses that conduct: a party exercising contractual discretion is “limited to exercising that discretion in good faith and

⁵⁸ To the extent that the City alleges that the interfaces have not been delivered because UAT has not been completed for the interfaces, the City’s argument holds no water because UAT performance is the City’s responsibility, as provided under SOW Section 6.3.3. Ex. D, SOW Rev. 11 at 8 (pdf 13). Further, SOW Section 6.11.3 makes the City responsible for developing and executing UAT scenarios and logging defects. *Id.* at 15 (pdf 20). The City has mentioned in May 2026 that the absence of access to a third-party job scheduling software called JAMS was preventing its ability to perform UATs for the delivered interfaces, but such access is not necessary for the City to complete UATs, nor is providing such access during UAT within RSI’s scope of responsibility under the Agreement. Nevertheless RSI offered as a cure in its August 4, 2026 letter to provide JAMS jobs support during implementation and to formalize the handover through a mutually agreed change request. Ex. Y, Aug. 4, 2026 RSI Cure Discussion Letter. Because JAMS access was not required under the Agreement or technically required to complete the UAT, not providing such access cannot be a ground for material breach or default.

⁵⁹ Ex V, Cure Notice at 2.

in accordance with fair dealing,” must “refrain from doing anything that will have the effect of frustrating the right of the other party to receive the fruits of the contract,” and “certainly [is] not permitted to create an inconvenience in order to terminate” the agreement.⁶⁰

By requesting, agreeing to, and performing under the CO-005 scope and schedule, the City also waived its right to terminate RSI based on the superseded CO-004 schedule. Waiver is “the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may result from an express agreement or be inferred from circumstances,” and courts “look to the totality of a party’s actions” in making that determination.⁶¹ Even an express non-waiver provision does not prevent conduct from waiving specific rights, including the right to terminate for schedule noncompliance.⁶²

That conduct was plainly inconsistent with any intent to enforce CO-004’s schedule. The City:

- requested the six-month extension under CO-005;
- acknowledged the April 2026 date would not be met;
- negotiated the newly added requirements under CO-005;
- directed RSI to “continue progressing the original contracted scope along with the items added under CR005”;
- participated in a two-day planning session for a performance segment that exists only under CO-005;
- asked RSI to keep proceeding under the existing sprint plan while the City refined its own estimates; and
- expressed expectation that RSI would perform to extended go-live date.

Before issuing the July 15, 2026 Cure Notice, the City never directed RSI to return to the CO-004 scope or April 13, 2026 schedule, or to stop work on CO-005 items. Having directed performance under the revised schedule for nine months, the City cannot now declare default by invoking the schedule it abandoned.

B. The City Cannot Attribute to RSI Delays Caused by Its Own Change Requests

The City’s request to revise the scope and schedule through CO-005—and its refusal to clarify that revision—caused the delay it now cites in the Cure Notice. The fact that the City never executed CO-005 does not shift responsibility to RSI. In *Gladwynne Construction Co. v. Mayor and City Council of*

⁶⁰ *Questar Builders, Inc. v. CB Flooring, LLC*, 410 Md. 241, 978 A.2d 651 (2009).

⁶¹ *Hovnanian Land Inv. Grp., LLC v. Annapolis Towne Centre at Parole, LLC*, 421 Md. 94, 122, 25 A.3d 967 (2011)

⁶² *Id.*

Baltimore, the Court of Special Appeals found that a contractor could not complete a project “while change orders were still forthcoming” and that the original schedule “was . . . rendered completely meaningless” by the City’s design changes.⁶³ The court held that the contractor could not be liable for delay where the City continuously expanded the scope, and rejected measuring progress against a schedule that omitted outstanding, unexecuted change orders.⁶⁴ The same rule applies here. The City directed RSI to prepare and perform under CO-005, adding 19 enhancements including 16 interfaces and six months to the schedule, then continued directing performance while controlling whether to sign the document memorializing the parties’ conduct. The City therefore cannot allege in the Cure Notice or Termination Notice that RSI failed to meet the original delivery schedule.

C. The City Hindered and Prevented the Performance It Now Calls Deficient

Even assuming CO-005 never became operative, the City’s conduct made the CO-004 schedule unachievable. Maryland law is “well settled that, where cooperation is necessary to the performance of a condition, a duty to cooperate will be implied, and that a party owing such a duty cannot prevail if such failure operates to hinder or prevent performance of the condition.”⁶⁵ The City is subject to that duty.⁶⁶ The City withheld the approvals RSI needed to develop and deliver the features and interfaces, preventing RSI from meeting the schedule.

On December 5, 2025, the City agreed that “[a]ll PI features must be fully reviewed and approved by 12/23/2025” so development and UAT preparation could proceed. It missed that deadline: by January 30, 2026, only 45 of 54 PI 3 features and 10 of 46 PI 4 features were approved. In February, it returned previously approved features to subject-matter-expert review, outside the agreed process. In April, RSI was still asking the City to approve features and interfaces so development could begin.

City approval of features and interfaces was a necessary predicate to the development on which RSI’s delivery depended. RSI warned in writing that unapproved items go “past their scheduled start dates,” causing workload to become “concentrated toward the end of the schedule,” and that dependencies between features compound delays in items that are not timely approved. The resulting bottleneck was so severe that City users asked in March 2026 to relieve a UAT window because the backlog was too large. The City cannot declare that RSI declared when any delays were caused by the City’s own conduct.

⁶³ 147 Md. App. 149, 807 A.2d 1141 (2002).

⁶⁴ *Id.*

⁶⁵ *Alois v. Waldman*, 219 Md. 369, 149 A.2d 406 (1959).

⁶⁶ *Funger v. Mayor & Council of Town of Somerset*, 249 Md. 311, 331-32 (1968) (applying the rule to municipalities and finding that the municipal government’s failure to perform breached contract); *see also CDC-LCGH, LLC v. Mayor & City Council of Baltimore*, No. CV WDQ-06-2235, 2007 WL 9728949 (D. Md. Jan. 29, 2007).

D. The City Violated the Implied Obligation of Good Faith and Fair Dealing in Exercising Its Termination Discretion

Maryland contract law implies an obligation to act in good faith and deal fairly, and that obligation “governs the manner in which a party may exercise the discretion accorded to it by the terms of the agreement.”⁶⁷ A party exercising discretion “must refrain from doing anything that will have the effect of frustrating the right of the other party to receive the fruits of the contract,” must “do everything that the contract presupposes they will do to accomplish its purpose,” and may not exercise discretion “to recapture an opportunity that it lost upon entering the contract.”⁶⁸ An objective standard applies where personal taste is not the basis for the exercise of discretion, and the discretion must be exercised “in accordance with the reasonable expectations of the other party.”⁶⁹ A party is “required to act reasonably in ensuring that the [contract] did not become inconvenient, and it certainly was not permitted to create an inconvenience in order to terminate,” and a subjective “gut feeling” or loss of confidence does not suffice.⁷⁰ The City’s conduct leading to the Termination Notice violated that obligation.

The City violated that obligation in four respects. First, it created the schedule problem it cited: it requested a six-month UAT extension, added 16 interfaces and later additional Scope items, and withheld feature and interface approvals for more than five months while returning approved features to review. Second, it invited RSI to a joint planning session to “align on a path forward,” but ignored RSI’s proposal and repeated follow-ups. When the City later demanded an integrated schedule to demonstrate timely completion, it withheld the scope and schedule clarification necessary to prepare one. Third, although the Cure Notice identified only two Items of Noncompliance, the City made return of \$1.4 million in cash and 5% retainage preconditions to discussing the Cure Notice—demands untethered to the stated grounds and the Agreement. Finally, the City terminated based on an unsupported “gut feeling” that a planning session “would not have resulted in the City having a working tax system by the end of the thirty (30) day cure period.”⁷¹

The City’s conduct throughout the cure process confirms that it never engaged in a good-faith cure discussion. It withheld scope and schedule clarification for more than nine months, measured performance against an abandoned standard, refused information needed to cure, and imposed demands outside the Agreement. Maryland law therefore barred the City from issuing the Termination Notice in the absence of good faith and fair dealing.

⁶⁷ *Questar Builders, Inc. v. CB Flooring, LLC*, 410 Md. 241, 273-74, 978 A.2d 651 (2009).

⁶⁸ *Id.* at 281–82.

⁶⁹ *Id.* at 282.

⁷⁰ *Id.* at 280–81.

⁷¹ Ex. A, Termination Notice.

E. Default Termination Would Undermine, Not Advance, the City's Interests

The City's stated concern is timely delivery of a working tax system, but default termination would delay that result. It would discard the substantial interfaces, data conversion, infrastructure, and project knowledge RSI has already delivered through more than two and a half years of requirements definition, future-state design, and process validation. None of that work is transferable to another vendor.

Termination would force the City to reprocure, award, and re-implement the project before new work could begin, prolonging its reliance on legacy systems at continued cost. RSI remains ready and able to complete the project within a reasonable time. It has already delivered substantial value, including a \$1,404,205 credit from the revX transition that provided the City a second subscription year at no additional cost, a \$250,000 change-order credit with \$116,000 still available, and \$95,878 released back into the contract under CO-001. Reprocurement would put that value at risk. If the default termination is found improper on appeal, the City would have to convert it to a termination for convenience and pay RSI all costs allocable to the work through the termination date.⁷²

The Board may defer the proposed termination,⁷³ and recommend that the City hold the joint planning session, clarify the scope and schedule, establish a path to timely completion, and execute any necessary change order. That course best advances timely completion and avoids the uncertainty and delay of reprocurement.

IV. CONCLUSION

This project needs a clearly defined scope and an achievable, mutually agreed schedule, not a termination by default. The City requested the CO-005 scope expansion and schedule extension, directed performance under it while withholding its signature, failed to provide required approvals, and conditioned cure discussions on demands outside the Cure Notice and Agreement. The record therefore does not establish a material breach or delay attributable to RSI, and the City's termination decision violates the implied obligation of good faith and fair dealing.

RSI respectfully requests that the Board decline to approve the proposed termination of Agreement #SCON-005311. Alternatively, RSI requests that the Board defer consideration and recommend that the City complete a joint planning session to clarify the project scope and schedule, determine a way forward, and execute the required change order. RSI reserves all rights, remedies, claims, counterclaims, defenses,

⁷² Baltimore Procurement Regulations § I.N.3.

⁷³ Baltimore Procurement Regulations at § 27.01.03.04.

and objections available to it under the Agreement, applicable law, and the City's Procurement Regulations.

Respectfully submitted,



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Enclosures: Exhibits