ATTACHMENT A – STATEMENT OF OFFENSE

Washington Gas Energy Systems agrees and stipulates that, had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

Relevant Law

1. The "8(a) program" is a program administered by the Small Business Administration ("SBA"). The program is named for Section 8(a) of the Small Business Act and is a development program that was created to help small, disadvantaged businesses compete in the American economy and access the federal procurement market. To qualify for the 8(a) program, a business (commonly referred to by the SBA and other government agencies as the "firm") must be at least 51 percent-owned and controlled by a U.S. citizen (or citizens) of good character who meet the SBA's definition of socially and economically disadvantaged. The firm also must be a small business (as defined by the SBA) and show a reasonable potential for success.

2. The SBA's 8(a) program exists, among other reasons, to facilitate the economic development of competitive small businesses that contribute to the overall health of the U.S. economy. The program also exists to ensure that large corporations do not gain monopoly positions with respect to U.S. government contracting. The SBA's 8(a) program furthers the additional goal of developing competitive small businesses owned by historically disadvantaged socioeconomic groups. The U.S. government agencies that award 8(a) contracts further these goals by, among other things, awarding contracts on either a set-aside basis, where the only competitive bidding is among similarly eligible firms, or on a sole-source basis, without competitive bidding. In doing so, those agencies further the congressional intent of the 8(a)

program by ensuring that 8(a) firms (and not other, ineligible firms) receive the benefit of the profits from the awarded contracts and the benefit of performing the volume of business from those contracts.

3. As a prerequisite to participation in the 8(a) program and to further payment under any government contracts subsequently awarded through that program, a firm must apply and qualify for participation in the 8(a) program through a formal SBA-administered application process. In addition, all 8(a) firms must submit annual reviews that the SBA uses to monitor eligibility. Firms can remain in the 8(a) program for up to nine years provided they maintain that eligibility, at which point the SBA considers a firm to have "graduated" from the 8(a) program. Once a small business graduates from the program, it is no longer eligible to obtain government contracts reserved for Section 8(a) program participants.

4. The SBA can revoke a firm's 8(a) status during that nine-year term by "graduating" it early if the agency determines that it no longer meets the criteria for certification. SBA regulations require firms to inform the SBA of any changes that would adversely affect program eligibility while they are participating in the 8(a) program. The SBA also may terminate a firm from the 8(a) program for good cause, such as submission of false information or failure to maintain eligibility requirements. After a firm loses its 8(a) eligibility, it cannot reapply, even if it changes its name or management. Similarly, after a firm loses 8(a) status, the disadvantaged individual upon whom eligibility was based is no longer eligible to qualify with another firm.

5. Participants in the 8(a) program are subject to regulatory and contractual limits on subcontracting work from 8(a) set-aside contracts. The SBA regulations require, among other

things, the 8(a) concern to agree that on construction contracts it "will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials)." 13 C.F.R. § 125.6(a)(3). Likewise, the Federal Acquisition Regulation (FAR) requires all contracting officers for the Government to include a clause in 8(a) set-aside contracts, which recites the applicable restriction on subcontracting. 48 C.F.R. § 19.811–3 (requiring contract officers to put clause 52.219–14, Limitations on Subcontracting, in any solicitation and contract arising from 8(a) contracting). Clause 52.219–14 reads, in pertinent part, "[b]y submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for . . . general construction the concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees." 48 C.F.R. § 52.219–14(c). The limitation on subcontracting is both a regulatory and contractual requirement for contractors to receive the benefits of the 8(a) Program.

Background

6. Washington Gas Energy Systems ("WGESystems" or "Systems") is a wholly owned subsidiary of Washington Gas Resources Corporation, which is, in turn, a wholly owned subsidiary of WGL Holdings, Inc. ("WGL"). WGL is the parent company for all of the corporations within the Washington Gas family. WGESystems plays no direct role in the delivery of natural gas, and it is not a utility. Instead, WGESystems is a design-build firm that specializes in providing energy efficiency and sustainability solutions to clients. WGESystems has historically functioned as a prime contractor on these projects.

7. Company A purported to specialize in, among other things, design build services of energy and renewable programs; general contracting and construction staffing services; and mechanical, electrical, plumbing, renovation, and carpentry. At all relevant times, Company A was certified to participate in the 8(a) program and was headquartered in Illinois. Company A's business address was Person A's home address.

8. Company B specializes in, among other things, design build services of energy and renewable programs; general contracting and construction staffing services; and mechanical, electrical, plumbing, renovation, and carpentry. At all relevant times, Company B was certified to participate in the 8(a) program and was headquartered in New Jersey.

9. Person A resided in Illinois. At all relevant times, Person A was president of Company A.

10. Person B resided in the District of Columbia. At all relevant times, Person B was a vice president at WGESystems.

11. Person C resided in Virginia. At all relevant times, Person C was a member of WGESystems' business development team.

Overview of the Scheme

12. WGESystems, Company A, and others executed and caused to be executed a scheme and artifice to defraud the United States and to obtain money or property by means of false and fraudulent pretenses, representations, and promises, in relation to procurements for services with several of the contracts awarded valued at more than $1,000,000.

13. WGESystems, Company A, and others engaged in and executed a scheme from approximately in or around March 2010, through in or around July 2011, to defraud the Small

Business Administration and the General Services Administration ("GSA") by, among other things: (i) concealing that WGESystems, which was not eligible for the aforementioned SBA contracting preferences, exercised impermissible control over Company A's bidding for and performance of Company A's GSA contracts; (ii) misrepresenting that Company A was in compliance with SBA regulations pertaining to Company A's GSA contracts, including that Company A employees had performed the required percentage of work on those contracts; and (iii) obtaining, at least, approximately $17,711,405 in U.S. government contracts as a result of these misrepresentations.

14. As described in greater detail below, WGESystems, Company A, Person A, Person B, and Person C participated in the scheme described above to obtain U.S. government contracts based on SBA-administered contracting preferences to which Company A was not entitled, and WGESystems did so for the purpose of enabling WGESystems and others to benefit improperly from the payments received in relation to those contracts, the volume of business performed pursuant to those contracts, and the expected future gain from performing those contracts.

Criminal Conduct

In 2010, WGESystems' Revenue from GSA Was Jeopardized by 8(a) Requirements Within the American Reinvestment and Recovery Act

15. GSA had an area-wide contract with WGESystems. The area-wide contract enabled GSA, without competition, to enter into contracts with WGESystems so that WGESystems could provide energy management services for federal buildings.

16. In conjunction with this area-wide contract, GSA also had a Utility Energy Service Contract ("UESC") with WGESystems. A UESC is an energy management contract focused on making federal buildings more energy efficient. An area-wide contract is the typical vehicle for implementing a UESC. The UESC eliminates the need for GSA to competitively bid projects and provides GSA the flexibility to combine appropriations and financing.

17. Until 2010, a core component of WGESystems' revenue was the projects awarded through the area-wide contract and the UESC.

18. In 2010—as a result of the American Reinvestment and Recovery Act ("Recovery Act")—GSA did not use the area-wide contract to award its energy efficiency work. Instead, the Recovery Act appropriated funds to make buildings in the District and the surrounding area more energy efficient. These funds were intended to be awarded through the 8(a) program. As a result of this change, WGESystems—which was not certified to participate in the 8(a) program—faced the prospect of losing millions of dollars of revenue.

WGESystems Bid with Multiple 8(a) Companies, Offering Each Company the Same Prices for WGESystems' Services, and Quickly Experienced Problems with Company B, Which Won Bids Through this Process

19. In an effort to maximize its chances of winning Recovery Act projects, WGESystems partnered with multiple 8(a) companies *on the same projects.* When partnering with these 8(a) companies, WGESystems, during the bidding process, did not function as a subcontractor that provided prices for only one aspect of the job. Instead, WGESystems behaved largely as it would if it were bidding these contracts on its own. WGESystems prepared the bid packages for each of the 8(a) companies. When preparing these bid packages, WGESystems priced the cost of the entire project. There was no attempt to determine, in

advance of bidding, which portion of the work would be performed by WGESystems and which portion would be performed by the 8(a) companies.

20. In or around March 2010, WGESystems personnel decided that it would give each 8(a) company with which it planned to partner the same base prices.

21. The 8(a) companies' only contribution to the process was providing a description of their companies and informing WGESystems how much to mark-up the contract for profit and overhead—that is, what percentage the 8(a) companies wanted to charge on top of WGESystems' base bid to establish the 8(a) companies' profit and administrative fees on the project.

22. On or about March 31, 2010, one of WGESystems' bidding partners, Company B won the bidding for a Recovery Act project.

23. On or about June 14, 2010, Company B won the bidding for a second Recovery Act project.

24. For both of these successful bids, Company B requested that WGESystems not mark-up WGESystems' base bids with any profit and overhead and that WGESystems, instead, share with Company B the profit and overhead that WGESystems had incorporated into WGESystems' base bid. WGESystems agreed to this arrangement.

25. For the bids for both of these projects, Company A requested that WGESystems mark up its base bids by five percent.

26. Not long after Company B was awarded the first of its contracts on March 31, 2010, Company B and WGESystems began experiencing difficulties working together. Company B, in its role as prime contractor, began trying to take control of these projects and to

direct WGESystems. Company B was also trying to obtain as great a percentage of the profit and overhead built into WGESystems' base bid as possible. Company B's efforts to assert control over the projects and the demeanor of their personnel quickly led WGESystems personnel to conclude that they did not want to work with Company B on any additional projects.

WGESystems Attempted to Manipulate the Bidding Process on Subsequent Contracts So That Company A, Not Company B, Would Have the Lowest Bid of WGESystems' Partners.

27. Within a week of Company B winning its June 14 bid, WGESystems personnel decided that they did not want any additional contracts with Company B, and a desire grew among WGESystems personnel for Company A, not Company B, to win any future bids.

28. On or about March 22, 2010, Company A's President (Person A) and two WGESystems personnel, Person B and Person C, agreed that if Company A was awarded a contract, it would not be required to work on the contract and would simply be paid a guaranteed percentage of the contract for allowing its name—and 8(a) status—to be connected to the bids.

29. On or about March 23, 2010, Person A confirmed the details of this conversation in an email sent to a number of WGESystems personnel, summarizing her understanding of her conversation with Person B and Person C. The summary included the following points:

1) [Company A] will subcontract the contract to Washington Gas in entirety.

2) [Company A] will mark up the contract with overhead and profit (We propose 4% overhead and 2% profit . . .). *This overhead and profit will be given and guaranteed to [Company A] whether Washington Gas makes or loses money on the contract.*

(Emphasis added.)

30. From on or around March 26, 2010, through on or around June 21, 2010, WGESystems did not take steps to ensure that Company A would win. After experiencing

Company B's attempts to run the projects awarded to it and the demeanor of Company B's personnel, WGESystems changed tact.

31. On or about June 21, 2010, Person A contacted WGESystems about Company A's proposed mark-up for the next round of Recovery Act bids, requesting a mark-up of five percent on larger projects and ten percent on smaller projects.

32. On or about June 21, 2010, in response to Person A's mark-up request, WGESystems personnel attempted to manipulate the bidding process, by coaching Company A on its mark-up strategy, so that Company A would win the future bids:

> There's [sic] a number of ways to skin the cat! . . . . Simply putting a percentage number on the overall WG [Washington Gas] cost is not going to win us an award with the GSA, and I think we know that for sure now after 2 awards going to your competitor. Let's first try to win the job for the [Company A]/WashGas team and we will work together to make sure that it will be a win win [sic] for both you and us.

33. Around the same time that Person C attempted to manipulate the process, a WGESystems senior executive, on or about June 22, 2010, raised concerns about securing anymore contracts with Company B, writing to his subordinates:

> I'd strongly encourage all of you to get together for a few minutes and think rationally, and then think it over again to decide if you really want to continue to engage w/[Company B] for more projects than the two that we have in our lap. . . .
>
> . . . . I think we should find another partner such as [Company A] at this point?

34. Person B stated in response to this email that the problem with Company B had been addressed, explaining "[w]e had a short group up this afternoon to discuss the issues and have a bidding strategy that will solve our concerns."

35. After Person B announced this new "bidding strategy," WGESystems modified the way it calculated Company A's mark-up, applying the mark-up to WGESystems' base price and treating the marked-up amount as WGESystems' new base price. In other words, Company A's mark-up became a component of WGESystems' base price.

36. After the new "bidding strategy," Company B never won another Recovery Act contract with WGESystems. But Company A won eight Recovery Act contracts with WGESystems.

From the Time These Eight Contracts Were Awarded to the Time that Person A Left Company A in Summer 2011, Company A Provided No Real Services on These Projects

37. For the duration of Person A's tenure with Company A, Company A provided no real services in connection with these eight contracts. Indeed, consistent with the March 2010 communications, Company A subcontracted these eight contracts in their entirety to WGESystems, played no role in project delivery, and collected the approximately six percent guaranteed profit and overhead referenced in the March 23, 2010, email.

38. In or around September 2010, Person A hired an individual, by phone, to be the project manager for the Recovery Act projects ("Company A's First Project Manager"). Company A's First Project Manager had originally applied to be a WGESystems employee, but was not selected for the position. After declining to hire this individual, WGESystems referred him to Company A. Person A and Company A's First Project Manager never met in person, and Person A never provided him with any guidance about how he was supposed to deliver any of these projects. Indeed, Company A's First Project Manager never saw Person A at the construction site for any of these projects. Instead, Company A's First Project Manager took

direction from WGESystems personnel about what he was supposed to do and allowed WGESystems to manage these projects. WGESystems paid for some of the costs associated with Company A's First Project Manager, including purchasing a laptop for him to use on these projects. For nearly all of Company A's First Project Manager's tenure on these projects, he was the only Company A employee who worked on any of these construction sites.

39. This project manager's lack of any true role on these projects is reflected in an October 7, 2010 email from the WGESystems employee responsible for project management on the Recovery Act projects ("WGESystems project manager"), who, at that time, was unaware of the agreement between Person A, Person B, and Person C. In the email, the WGESystems project manager wrote: "[Person A] is great to work with, but we/WGESystems are providing 99% of the effort with the [Company A] projects. [Company A's project manager] takes direction from us."

40. On or about November 24, 2010, the WGESystems project manager wrote "[Person A's] virtually doing nothing, wants a guarantee not to lose money and receive 5.8% of 19M; it's almost like winning the lottery."

41. On or about November 29, 2010, a WGESystems senior executive and Person A executed a subcontracting agreement that—consistent with Person A's March 23, 2010, email—guaranteed that Company A, the purported prime contractor, would receive 5.8% of the value of the Recovery Act projects regardless of whether the projects were profitable.

42. On or about January 14, 2011, WGESystems' project manager wrote to another WGESystems employee about a recent conversation he had with Person A, stating "remind me to tell you about the conversation [Person A] and I recently had over what she claims the initial

discussions were between herself, [Person C] and Person B, for [Company A] to come on board as an 8a partner . . . WOW." Person A revealed to the WGESystems project manager the agreement Person A, Person B, and Person C reached in March 2010 that Company A would not have to perform work on any of the Recovery Act projects awarded to it.

43. On or about March 29, 2011, a GSA employee—prompted, in part, by Company A's poor performance on these projects—sent an email to Person A, questioning what Company A was doing to comply with its labor requirements under the 8(a) program. Person A forwarded the email to WGESystems employees.

44. The very same day that Person A received the email from GSA, Person A proposed a solution to GSA's complaints. The solution was that Company A would temporarily "hire" the WGESystems project manager as a Company A employee and then the WGESystems project manager would return to WGESystems as an employee as soon as the Recovery Act projects were completed. While Person A never employed this exact solution, Person A and WGESystems employees ultimately employed a solution very similar to the one Person A proposed.

45. In or around April 2011, Person A hired a new person to be Company A's new project manager ("Company A's Second Project Manager"). Prior to being hired by Company A, Company A's Second Project Manager, had been working as a contractor for WGESystems on the Recovery Act projects. Person A hired Company A's Second Project Manager by phone and this project manager, also, never saw Person A at a construction site. Shortly after Company A's Second Project Manager was hired, he terminated Company A's First Project Manager.

46. Person A ceased working for Company A in or around July 2011. Through the time that Person A left Company A, there were no other Company A personnel working on Recovery Act construction sites.

Contracts Defendant Obtained Through the Scheme

47. Throughout the relevant period, Company A obtained the following contracts from GSA:

Building Name	Date Awarded	Obligated Amount
EPA Building	7/7/10	$3,087,653
Suitland	7/9/10	$746,628
VA	7/9/10	$1,495,703
Secret Service	7/30/10	$341,514
New Carrolton	9/16/10	$1,231,214
Tax Court	9/21/10	$9,019,825
Markey	9/21/10	$1,052,052
Bostetter	9/21/10	$736,816
	Totals	$17,711,405

Competition for each of these contracts was restricted to 8(a) firms. These contracts required Company A to perform work in, and around, the District.

48. With respect to each contract above, Company A, at WGESystems' direction, attested to the procuring U.S. government agency that it was an eligible SBA 8(a) firm, and

WGESystems caused these attestations with the intent that the procuring agencies would rely on those attestations in their respective award processes and in providing the listed payments. For the reasons set forth above, Company A's representations in this regard were false because Company A was not a legitimate 8(a) firm and because WGESystems, which was an 8(a)-ineligible entity for purposes of the contracts listed above, improperly exerted control over Company A's bidding for and performance of Company A's GSA contracts.

49. By the terms of the November 29, 2010, subcontracting agreement, Company A was entitled to 5.8% of the $17,711,405 total value of the contracts, which equals $1,027,261.

50. To date, with all but one of these eight projects completed or suspended, WGESystems has incurred $13,391,276 in costs on these contracts; received $9,636,294 from Company A; and is owed an additional $2,632,401 by Company A. Accordingly, WGESystems has lost approximately, $1,122,581, to date, on these projects. WGESystems initially anticipated a profit margin of 8.81% on these projects, which would have equaled $1,560,374.

CONCLUSION

51. As a result of the scheme described above, WGESystems willingly and knowingly defrauded the United States government of, at least, $17,711,405 that was intended to be awarded to a valid 8(a) company. Based on the agreement between Company A and WGESystems, Company A has an anticipated profit from the scheme of $1,027,261 and WGESystems has lost $1,122,581.

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Defendant's Acceptance

I have read this Statement of the Offense and carefully reviewed every part of it with my attorney. I am fully satisfied with the legal services provided by my attorney in connection with this Statement of the Offense and all matters relating to it. I fully understand this Statement of the Offense and voluntarily agree to it. No threats have been made to me, nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully. No agreements, promises, understandings, or representations have been made with, to, or for me other than those set forth above.

11-17-2014
Date

Gautam Chandra
President, Washington Gas Energy Systems

Defense Counsel's Acknowledgment

I am Defendant Washington Gas Energy System's attorney. I have reviewed every part of this Statement of the Offense with the duly authorized representative of the Company and all relevant directors and officers. It accurately and completely sets forth the Statement of the Offense agreed to by the defendant and the Office of the United States Attorney for the District of Columbia.

11-17-14
Date

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