

15-17-6627

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY



IN THE DISTRICT COURT OF OKLAHOMA COUNTY NOV 20 2017  
STATE OF OKLAHOMA

RICK WARREN  
COURT CLERK

36  
**CJ-2017-6627**

Case No. \_\_\_\_\_

ENGINEERED SYSTEMS & )  
ENERGY SOLUTIONS, INC., )  
) )  
Plaintiff, )  
) )  
vs. )  
) )  
AUTRY TECHNOLOGY CENTER; )  
) )  
CADDO KIOWA TECHNOLOGY CENTER; )  
) )  
CAMERON UNIVERSITY C/O BOARD OF REGENTS )  
OF THE UNIVERSITY OF OKLAHOMA; )  
) )  
CENTRAL TECHNOLOGY CENTER; )  
) )  
CHISHOLM TRAIL TECHNOLOGY CENTER; )  
) )  
CITY OF TULSA-ROGERS COUNTY PORT )  
AUTHORITY; )  
) )  
CONNORS STATE COLLEGE C/O BOARD OF )  
REGENTS FOR THE OKLAHOMA AGRICULTURAL )  
AND MECHANICAL COLLEGES; )  
) )  
EAST CENTRAL UNIVERSITY C/O REGIONAL )  
UNIVERSITY SYSTEM OF OKLAHOMA; )  
) )  
EASTERN OKLAHOMA COUNTY TECHNOLOGY )  
CENTER; )  
) )  
EASTERN OKLAHOMA STATE COLLEGE; )  
) )  
GORDON COOPER TECHNOLOGY CENTER; )  
) )  
GRAND RIVER DAM AUTHORITY F/K/A )  
OKLAHOMA SCENIC RIVERS COMMISSION; )  
) )  
GREAT PLAINS TECHNOLOGY CENTER; )  
) )  
GREEN COUNTRY TECHNOLOGY CENTER; )  
) )  
HIGH PLAINS TECHNOLOGY CENTER )  
DISTRICT #24; )



INDIAN CAPITAL TECHNOLOGY CENTER )  
DISTRICT NO. 4; )  
 )  
J M DAVIS MEMORIAL COMMISSION; )  
 )  
J. D. MCCARTY CENTER; )  
 )  
KIAMICHI TECHNOLOGY CENTERS; )  
 )  
LANGSTON UNIVERSITY C/O BOARD OF )  
REGENTS FOR THE OKLAHOMA AGRICULTURAL )  
AND MECHANICAL COLLEGES; )  
 )  
MERIDIAN TECHNOLOGY CENTER; )  
 )  
MID-AMERICA TECHNOLOGY CENTER; )  
 )  
MID-DEL TECHNOLOGY CENTER; )  
 )  
MURRAY STATE COLLEGE; )  
 )  
NORTHEAST TECHNOLOGY CENTER; )  
 )  
NORTHEASTERN OKLAHOMA A&M COLLEGE )  
C/O BOARD OF REGENTS FOR THE OKLAHOMA )  
AGRICULTURAL AND MECHANICAL COLLEGES; )  
 )  
NORTHEASTERN STATE UNIVERSITY C/O )  
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA; )  
 )  
NORTHERN OKLAHOMA COLLEGE; )  
 )  
NORTHWESTERN OKLAHOMA STATE )  
UNIVERSITY C/O REGIONAL UNIVERSITY )  
SYSTEM OF OKLAHOMA; )  
 )  
OKLAHOMA BOLL WEEVIL ERADICATION )  
ORGANIZATION; )  
 )  
OKLAHOMA CORPORATION COMMISSION; )  
 )  
OKLAHOMA DEPARTMENT OF AGRICULTURE, )  
FOOD AND FORESTRY; )  
 )  
OKLAHOMA DEPARTMENT OF CORRECTIONS; )

OKLAHOMA DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES; )  
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OKLAHOMA DEPARTMENT OF REHABILITATION SERVICES; )  
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OKLAHOMA DEPARTMENT OF TRANSPORTATION; )  
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OKLAHOMA DEPARTMENT OF VETERANS AFFAIRS; )  
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OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION; )  
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OKLAHOMA HISTORICAL SOCIETY; )  
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OKLAHOMA MILITARY DEPARTMENT; )  
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OKLAHOMA MUNICIPAL POWER AUTHORITY; )  
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OKLAHOMA OFFICE OF JUVENILE AFFAIRS; )  
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OKLAHOMA OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES; )  
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)  
OKLAHOMA PANHANDLE STATE UNIVERSITY C/O BOARD OF REGENTS FOR THE OKLAHOMA AGRICULTURAL AND MECHANICAL COLLEGES; )  
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)  
OKLAHOMA SPACE INDUSTRY DEVELOPMENT AUTHORITY; )  
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OKLAHOMA STATE BUREAU OF INVESTIGATION; )  
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OKLAHOMA STATE DEPARTMENT OF HEALTH; )  
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OKLAHOMA TOURISM AND RECREATION DEPARTMENT; )  
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OKLAHOMA TURNPIKE AUTHORITY; )  
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PIONEER TECHNOLOGY CENTER; )  
)  
)

PORT OF MUSKOGEE; )  
)  
QUARTZ MOUNTAIN NATURE PARK; )  
)  
REDLANDS COMMUNITY COLLEGE; )  
)  
ROGERS STATE UNIVERSITY C/O BOARD OF )  
REGENTS OF THE UNIVERSITY OF OKLAHOMA; )  
)  
ROSE STATE COLLEGE; )  
)  
SEMINOLE STATE COLLEGE; )  
)  
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY )  
C/O REGIONAL UNIVERSITY SYSTEM OF )  
OKLAHOMA; )  
)  
SOUTHWESTERN OKLAHOMA STATE )  
UNIVERSITY C/O REGIONAL UNIVERSITY )  
SYSTEM OF OKLAHOMA; )  
)  
TRI COUNTY TECHNOLOGY CENTER; )  
)  
TULSA COMMUNITY COLLEGE; )  
)  
TULSA TECHNOLOGY CENTER; )  
)  
UNIVERSITY CENTER OF SOUTHERN )  
OKLAHOMA; )  
)  
UNIVERSITY OF CENTRAL OKLAHOMA C/O )  
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA; )  
)  
UNIVERSITY OF OKLAHOMA C/O BOARD OF )  
REGENTS OF THE UNIVERSITY OF OKLAHOMA; )  
)  
UNIVERSITY OF OKLAHOMA HEALTH SCIENCES )  
CENTER - TULSA, C/O BOARD OF REGENTS OF )  
THE UNIVERSITY OF OKLAHOMA; )  
)  
UNIVERSITY OF OKLAHOMA HEALTH SCIENCES )  
CENTER C/O BOARD OF REGENTS OF THE )  
UNIVERSITY OF OKLAHOMA; )  
)  
)

UNIVERSITY OF SCIENCE AND ARTS OF )  
 OKLAHOMA; )  
 )  
 WESTERN OKLAHOMA STATE COLLEGE; and )  
 )  
 WILL ROGERS MEMORIAL COMMISSION, )  
 )  
 Defendants. )

**PETITION**

Plaintiff, Engineered Systems & Energy Solutions, Inc. (“Plaintiff”), for its Petition alleges and states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, Engineered Systems & Energy Solutions, Inc., is an Oklahoma corporation with its principal place of business in Oklahoma County, Oklahoma.
2. Each of the Defendants listed in the caption is an agency of the State of Oklahoma.
3. Each of the Defendants listed in the caption is hereafter referred to as a “Defendant” and collectively the “Defendants.”
4. This Court has jurisdiction over this matter and venue is proper in this Court.

**FACTUAL BACKGROUND**

5. On May 8, 2012, Governor Mary Fallin signed Oklahoma Senate Bill 1096 into law, which established the Oklahoma State Facilities Energy Conservation Program (the “20x2020 Program”), which was codified at 27A O.S. § 3-4-106.1.
6. The 20x2020 Program directed all Oklahoma state agencies and higher education institutions to achieve at least a 20 percent energy consumption savings by fiscal year 2020 when compared to the 2012 fiscal year utility expenditures.

7. A central component of the 20x2020 Program was the development and implementation of an organizational behavior-based or performance-based energy conservation program.

8. In November 2012, the State of Oklahoma Department of Central Purchasing solicited proposals from third parties for the development and implementation of the behavior-based portion of the 20x2020 Program.

9. Plaintiff was ultimately selected as the sole contractor to develop and implement an organizational behavior-based energy conservation program for all state agencies.

10. On or about January 10, 2014, the State of Oklahoma, acting through the Office of Management and Enterprise Services ("OMES") entered into that certain Statewide Contract Number 125 ("SW125"), providing for Plaintiff to develop and implement the behavior-based energy conservation program for the 20x2020 Program.

11. Pursuant to SW125, Plaintiff's compensation was to be calculated based on the energy savings realized by the various agencies compared to a baseline year.

12. SW125 provided for State of Oklahoma agencies to provide Plaintiff with data on energy consumption so that the savings number could be calculated.

13. Enrollment in SW125 was mandatory for State of Oklahoma agencies, unless they qualified for and were granted an exemption.

14. On or about March 1, 2015, a Statewide Contract Addendum was issued by OMES, which renewed SW125 for the period from March 1, 2015, through February 28, 2016.

15. On or about February 19, 2016, a Statewide Contract Addendum was issued by OMES, which renewed SW125 through the period March 1, 2016, through February 28, 2017.

16. On or about April 14, 2016, a Statewide Contract Addendum was issued by OMES, which cancelled SW125.

17. In the time between the entry of SW125 up to its cancellation, Plaintiff performed services for each of the Defendants pursuant to the terms of SW125.

18. Plaintiff issued invoices to the Defendants for those services.

19. Many of the invoices issued by Plaintiff for those services remain unpaid and are in arrears.

20. Amounts currently in arrears include the following, on which interest has accrued and continues to accrue:

<b>Name</b>	<b>Amount</b>
Caddo Kiowa Technology Center	4,233.50
Cameron University c/o Board of Regents of the University of Oklahoma	33,896.76
Central Technology Center	327.50
East Central University c/o Regional University System of Oklahoma	2,399.44
Eastern Oklahoma County Technology Center	3,519.49
Northeastern Oklahoma A&M College c/o Board of Regents for the Oklahoma Agricultural and Mechanical Colleges	5,654.00
Northeastern State University c/o Regional University System of Oklahoma	175,946.74
Northern Oklahoma College	55,630.67
Oklahoma Department of Agriculture, Food and Forestry	737.07
Oklahoma Department of Corrections	82,955.69
Oklahoma Department of Transportation	14,615.38
Oklahoma Department of Wildlife Conservation	11,696.84
Oklahoma Military Department	27,043.90
Oklahoma Municipal Power Authority	464.61
Oklahoma Office of Juvenile Affairs	4,676.38

<b>Name</b>	<b>Amount</b>
Oklahoma Office of Management and Enterprise Services	1,012.75
Oklahoma State Bureau of Investigation	13,442.38
Oklahoma Tourism and Recreation Department	56,449.87
Pioneer Technology Center	5,631.72
Quartz Mountain Nature Park	14,581.46
Redlands Community College	8,181.20
Rogers State University c/o Board of Regents of the University of Oklahoma	8,405.04
Seminole State College	2,970.78
Southeastern Oklahoma State University c/o Regional University System of Oklahoma	49,647.03
Southwestern Oklahoma State University c/o Regional University System of Oklahoma	23,742.12
Tulsa Community College	38,738.33
Tulsa Technology Center	2,876.90
University Center of Southern Oklahoma	1,523.42
University of Oklahoma Health Sciences Center c/o Board of Regents of the University of Oklahoma	341,549.77
Western Oklahoma State College	3,063.94
	\$995,614.68

21. In addition, many of the Defendants have failed to provide energy usage data to Plaintiff as required by SW125. Those Defendants include the following:

<b>Name</b>
Autry Technology Center
Caddo Kiowa Technology Center
Cameron University c/o Board of Regents of the University of Oklahoma
Central Technology Center
Chisholm Trail Technology Center
City of Tulsa-Rogers County Port Authority



**Name**

Connors State College c/o Board of Regents for the Oklahoma Agricultural and Mechanical Colleges

East Central University c/o Regional University System of Oklahoma

Eastern Oklahoma County Technology Center

Eastern Oklahoma State College

Gordon Cooper Technology Center

Grand River Dam Authority f/k/a Oklahoma Scenic Rivers Commission

Great Plains Technology Center

Green Country Technology Center

High Plains Technology Center District #24

Indian Capital Technology Center District No. 4

J M Davis Memorial Commission

J. D. McCarty Center

Kiamichi Technology Centers

Langston University c/o Board of Regents for the Oklahoma Agricultural and Mechanical Colleges

Meridian Technology Center

Mid-America Technology Center

Mid-Del Technology Center

Murray State College

Northeast Technology Center

Northeastern Oklahoma A&M College c/o Board of Regents for the Oklahoma Agricultural and Mechanical Colleges

Northeastern State University c/o Regional University System of Oklahoma

Northern Oklahoma College

Northwestern Oklahoma State University c/o Regional University System of Oklahoma

Oklahoma Boll Weevil Eradication Organization

Oklahoma Corporation Commission

Oklahoma Department of Agriculture, Food and Forestry

Oklahoma Department of Corrections

Oklahoma Department of Mental Health and Substance Abuse Services

**Name**

Oklahoma Department of Rehabilitation Services  
Oklahoma Department of Transportation  
Oklahoma Department of Veterans Affairs  
Oklahoma Department of Wildlife Conservation  
Oklahoma Historical Society  
Oklahoma Military Department  
Oklahoma Office of Juvenile Affairs  
Oklahoma Office of Management and Enterprise Services  
Oklahoma Panhandle State University c/o Board of Regents for the Oklahoma  
Agricultural and Mechanical Colleges  
Oklahoma Space Industry Development Authority  
Oklahoma State Department of Health  
Oklahoma Tourism and Recreation Department  
Oklahoma Turnpike Authority  
Port of Muskogee  
Quartz Mountain Nature Park  
Redlands Community College  
Rogers State University c/o Board of Regents of the University of Oklahoma  
Rose State College  
Seminole State College  
Southeastern Oklahoma State University c/o Regional University System of  
Oklahoma  
Southwestern Oklahoma State University c/o Regional University System of  
Oklahoma  
Tri County Technology Center  
Tulsa Community College  
Tulsa Technology Center  
University Center of Southern Oklahoma  
University of Central Oklahoma c/o Regional University System of Oklahoma  
University of Oklahoma c/o Board of Regents of the University of Oklahoma  
University of Oklahoma Health Sciences Center - Tulsa, c/o Board of Regents of the  
University of Oklahoma

**Name**

University of Science and Arts of Oklahoma

Will Rogers Memorial Commission

22. Prior to commencing this suit, Plaintiff made demand on the Defendants and also participated in a settlement meeting with the Oklahoma Attorney General's office.

**FIRST CLAIM FOR RELIEF**  
**(BREACH OF CONTRACT)**

23. Plaintiff incorporates each and every allegation of fact or claim set forth in the above and below paragraphs.

24. Each of the Defendants breached SW125 by failing to perform their obligations thereunder, including failing to timely pay amounts when due and/or failing to provide energy usage data to Plaintiff.

25. Plaintiff has incurred damages in excess of \$75,000.00 caused by the Defendants' multiple breaches.

WHEREFORE, premises considered, Plaintiff prays that it have judgment against the Defendants in an amount in excess of \$75,000.00 plus pre- and post-judgment interest, until paid, the costs of this action, a reasonable attorney's fee, and such other and further relief as to which Plaintiff may be entitled.

**SECOND CLAIM FOR RELIEF**  
**(UNJUST ENRICHMENT)**

26. Plaintiff incorporates each and every allegation of fact or claim set forth in the above and below paragraphs.

27. The Defendants accepted and received benefits from Plaintiff.

28. It is contrary to equity and good conscience for the Defendants to retain the benefits.

29. Such benefits unjustly enriched the Defendants to the detriment of Plaintiff.

30. Plaintiff is entitled to relief and compensation for the Defendants' unjust enrichment.

WHEREFORE, premises considered, Plaintiff prays that it have judgment against the Defendants in an amount in excess of \$75,000.00 plus pre- and post-judgment interest, until paid, the costs of this action, a reasonable attorney's fee, and such other and further relief as to which Plaintiff may be entitled.

**THIRD CLAIM FOR RELIEF**  
**(FRAUDULENT INDUCEMENT)**

31. Plaintiff incorporates each and every allegation of fact or claim set forth in the above and below paragraphs.

32. Prior to agreeing to enter into SW125, OMES and/or the State of Oklahoma Department of Central Purchasing, acting for and on the behalf of each of the Defendants, represented to Plaintiff that the buildings listed in a document titled Oklahoma Real Property Asset Report would be part of the 20x2020 Program.

33. OMES and/or the State of Oklahoma Department of Central Purchasing, acting for and on behalf of each of the Defendants, also represented to Plaintiff that only two Oklahoma state agencies, Oklahoma State University and University Hospitals Authority and Trust, would be exempt from participating in the behavior-based energy conservation portion of the 20x2020 Program, and that the 20x2020 Program was mandatory on all other Oklahoma state agencies.

34. The Defendants also represented to Plaintiff that they would compensate Plaintiff for providing services to the Defendants.

35. The Defendants' representations included the issuance of purchase orders to Plaintiff for the provision of such services, actions in participating and accepting services provided by Plaintiff, and/or other communications involving Plaintiff's provision of services under SW125.

36. The representations made by or on the behalves of the Defendants were material and were made with the intention that Plaintiff rely on them.

37. Plaintiff reasonably relied on the Defendants' representations in agreeing to perform services for each of the Defendants pursuant to the terms of SW125 and under the prices and compensation scheme agreed to.

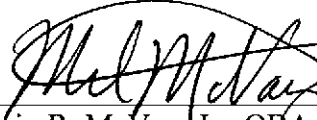
38. The Defendants' representations were false and were known by the Defendants to be false at the time they were made to Plaintiff.

39. As a result of its reasonable reliance on the Defendants' material misrepresentations, Plaintiff suffered damages in excess of \$75,000.00.

40. Due to the Defendants' actions, they are liable to Defendant for fraudulent inducement.

WHEREFORE, premises considered, Plaintiff prays that it have judgment against the Defendants in an amount in excess of \$75,000.00 plus pre- and post-judgment interest, until paid, the costs of this action, a reasonable attorney's fee, and such other and further relief as to which Plaintiff may be entitled.

Respectfully submitted,



Melvin R. McVay, Jr., OBA #6096

Clayton D. Ketter, OBA #30611

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Oklahoma City, OK 73102

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[cdketter@phillipsmurrah.com](mailto:cdketter@phillipsmurrah.com)

ATTORNEYS FOR PLAINTIFF

**JURY TRIAL REQUESTED**