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April 29, 2003

VIA HAND DELIVERY

April Sands, Esq.
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: **MUR 5357 – Centex-Rooney Construction Co., Inc. Response**

Dear Ms. Sands:

We represent Centex-Rooney Construction Co., Inc. ("Rooney").[1] The purpose of this letter is to respond to a letter from the Federal Election Commission (the "Commission") dated April 2, 2003, and received on April 7, 2003,[2] notifying Rooney that it may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). The Commission's letter was prompted by a complaint filed by Centex Corporation ("Centex") in letters dated February 27, 2003 and March 24, 2003, informing the Commission of potential violations of the Act at Rooney.

Rooney is a contracting and construction services company incorporated in the state of Florida with headquarters in Plantation, FL. It is a subsidiary of Centex Construction Group, Inc. ("CCG"). CCG, in turn, is a subsidiary of Centex. Rooney's business consists of public and private commercial construction projects principally in Florida. Rooney is responsible for bidding on and securing all of its own business. It was acquired by CCG in 1986. Rooney has cooperated fully with the investigation conducted by Centex, and it intends to extend the same cooperation to the Commission.

Rooney admits that it violated the Act. The complaint alleges, and Rooney does not dispute, that over a five-year period certain Rooney employees made a total of $55,875 in federal contributions and were reimbursed for those contributions out of

[1] A Designation of Counsel statement is enclosed.

[2] The Commission's Office of General Counsel subsequently granted Rooney's request for an extension of time to respond until April 29, 2003.

corporate funds. These actions violated 2 U.S.C. § 441b(a) (contributions by corporations) and 2 U.S.C. § 441f (contributions in the name of another).

However, Rooney's violations were not knowing and willful. *See* 2 U.S.C. § 437g(a)(5)(B). A knowing and willful violation of the Act requires evidence of "defiance or knowing, conscious, and deliberate flaunting of the Act." *AFL-CIO v. FEC*, 628 F.2d 97, 101 (D.C. Cir. 1980), *cert. denied*, 449 U.S. 982 (1980); *see also, e.g. Conciliation Agreement, In re Future Tech International, Inc.*, MUR 4884 (Fed. Election Comm'n, May 5, 1999) ("The knowing and willful standard requires knowledge that one is violating the law. [citation omitted]"). In order to find a violation knowing and willful, the Commission must have "clear and convincing proof that the acts were committed with a knowledge of all of the relevant facts and a recognition that the action is prohibited by law." H.R. Rep. No. 94-917, at 4 (1976).

In this case, the actions of the Rooney employees do not reflect any defiance or conscious and deliberate flaunting of the Act. There is no indication that contributions were reimbursed with the intent to evade the prohibitions in the Act. Rather, contributions were reimbursed because employees' participation in community affairs was felt to benefit Rooney. Indeed, according to the records that have been provided the Commission, the federal contributions that were reimbursed ranged from $100 to $1,000. If the purpose of the reimbursements was to permit contributions greater than the maximum allowed by law, one would expect that the bulk of the contributions would have been at or near the statutory maximum. In fact only eleven of the thirty-seven total contributions to candidates were for the maximum amount permitted.

Moreover, as noted in the complaint, employees were reimbursed for certain contributions to state and local candidates as well. It is of particular significance that the bulk of those contributions were in Florida and Georgia – states where corporate political contributions are permissible. *See* Fla. Stat. Ann. §§ 106.011(8), 106.08; Ga. Code Ann. § 21-5-41. Reimbursements for those contributions were accomplished in the exact same manner as the reimbursements of federal contributions, further indicating that the reimbursement of federal contributions was not undertaken for the purpose of violating the law.

We therefore ask that the Commission find reason to believe that Rooney has violated the Act, and that the General Counsel enter into negotiations for pre-probable cause conciliation with Rooney pursuant to 11 C.F.R. § 111.18(d) in order to resolve this

matter fairly and expeditiously. Pre-probable cause conciliation is appropriate at this point for several reasons. First, the facts as set forth in the complaint are not in dispute. A conciliation agreement would allow the Commission to hold Rooney accountable for the improper activities that took place. Resolving this matter before a finding of probable cause would free up Commission staff time and resources for other matters of more immediate consequence, by eliminating the need for an expensive and time-consuming investigation. *See, e.g., In re General Cigar Co.*, MUR 4286 (Fed. Election Comm'n, March 7, 1997). Further, there is no indication that any candidate who received a contribution knew in any way that the contribution would be reimbursed by Rooney or that it was improper in any respect. Finally, Centex, with the full cooperation of the employees at Rooney, has acted swiftly to end the improper activities and to take steps to prevent such improper activities from occurring in the future.

We look forward to working with you and the Commission to resolve this matter. We would be pleased to discuss any aspect of this letter with you or other Commission staff.

Sincerely,

Martha L. Cochran

Robert S. Litt
Martha L. Cochran

Enclosure

STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent

MUR 5357

NAME OF COUNSEL: Robert S. Litt
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The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Centex Rooney Construction Co. Inc
Print Name

4/28/03
Date

Signature

Exec VP & General Counsel
Title

RESPONDENT'S NAME: Centex-Rooney Construction Co., Inc.

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