

MAY 1, 1959

Commissioner's Court met in Special Session with all members present.

Motion made, seconded and carried to call for payment Bonds 297-303, Special Road Bonds, Series F, in the amount of \$7,000.00. Bonds to be paid by Board of County and District Road Indebtedness.

Welby K. Parish

Jim Shockey

Bryant Holmes

Cloe Spencer

Horace Morris

MAY 11, 1959

On this the 11th day of May, 1959, the Commissioner's Court met in regular session with all members present.

Motion was made by Bryant Holmes that all moneys collected from delinquent taxes that would be allocated to the Road & Bridge Fund and all penalty and interest will be placed in a Right-of-Way Fund for State and Federal Roads. Motion was seconded by Jim Shockey and carried by the Court.

Motion was made by Bryant Holmes to buy a new typewriter for the County Superintendent's office and seconded by Cloe <sup>*purchaser*</sup> Spencer and carried by the Court.

Welby K. Parish

Bryant Holmes

Cloe Spencer

Horace Morris

MAY 12, 1959

Commissioner's Court met in Regular Session with all members present.

Motion made, seconded and carried to accept the bid of Hobbs Equipment Co. on one new Oliver-Crawler Tractor, Model #CC-9657, H.P. 4 cylinder diesel motor. Less trade-in of one used TD6 International Tractor & loader. Net difference, \$5,000.00.

Welby K. Parish

Jim Shockey

Bryant Holmes

Cloe Spencer

Horace Morris



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degree of consanguinity to any member of the Commissioners Court, the Tax Collector, or County or District Attorney not holding office in said county.

NOW, THEREFORE, THIS CONTRACT, made and entered into by and between the County of Upshur, Texas, a body politic and corporate, acting herein, and by and through the Commissioners Court, joined by the Comptroller of Public Accounts of the State of Texas, hereinafter styled First Party, and Edwin M. Fulton of the County of Upshur, State of Texas, hereinafter styled Second Party:

W I T N E S S E T H

I.

First Party agrees to employ and does hereby employ Second Party to enforce by suit or otherwise, and to aid and assist the local officers in the enforcement of the collection of all delinquent State and county ad valorem taxes, penalty and interest, and all delinquent taxes, penalty and interest (except taxes of independent school districts and incorporated cities and towns) due any and all political subdivisions or defined districts of said county and State which the County Tax Collector receives and receipts for, under the provisions of Article 7254, Revised Statutes, 1925, and shown to be delinquent upon the delinquent tax records of said county from 1919 to the date of the termination of this contract as fixed in Section IX hereof (including such personal property or insolvent taxes as the Commissioners Court and Second Party mutually deem collectible).

II.

Taxes which are not now delinquent, but which hereafter during the term of this contract are allowed to fall delinquent, shall become subject to the terms of this contract on September 1st of the year in which the same shall become delinquent. And further, with reference to taxes not now delinquent, but which become delinquent during the term hereof, or taxes which may have fallen delinquent on February 1st or subsequent thereto next preceding the date of this contract, it is agreed that where suit is or has been brought on any property for prior years delinquent taxes, Second Party shall include in his action all taxes on the property involved, delinquent before trial, whether before or after September 1st of such year; and where the State and county or impleaded or intervene in a suit brought by another taxing unit, it shall be Second Party's duty to include

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in his answer or intervention all taxes delinquent before trial on the property involved, whether such taxes shall fall delinquent before or after September 1st of such year, and in all such cases Second Party shall be entitled to the commission herein provided for collecting delinquent taxes.

### III.

Second Party is to call to the attention of the County Tax Collector or other officials any errors, double assessments, or other discrepancies coming under his observation during the progress of the work, and all charges on the tax rolls that show from 1919 to the date of the termination of this contract to be delinquent, which are caused through error, conflicts, double renditions, illegal assessments, etc. A cancellation certificate shall be prepared on forms furnished by the State Comptroller of Public Accounts, Austin, Texas, showing how such errors came about, and which shall be sufficiently full and complete as to justify the Commissioners Court in ordering a cancellation certificate issued, and that will meet with the approval of the Comptroller of Public Accounts, Austin, Texas.

### IV.

Second Party hereby agrees and obligates himself to communicate with each and every person, firm, association or corporation owing any of such taxes, with a view of collecting same; and shall, before filing suits for the recovery of delinquent taxes for any year or years prepare, in triplicate, delinquent tax notices, and shall mail one of such notices to the owner or owners of said property at their last known address, covering all delinquent taxes shown to be due on the tax rolls of said county, as provided for in Article 7324, Revised Civil Statutes, 1925, as amended by Chapter 117, page 196, Acts of the 42nd Legislature, Regular Session, and file one copy of such notice with the Tax Assessor-Collector. In the event that the taxes, together with penalty and interest, are not paid within thirty (30) days from the date such statements and notices are mailed, then Second Party shall prepare, file and institute, as soon as practical thereafter, a suit for the collection of said taxes, penalty and interest, which suit shall include all past due taxes for all previous years on such tract or tracts, and where there are several lots in the same addition

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or subdivision delinquent, belonging to the same owner or owners, all said delinquent lots shall be made the subject of a single suit, and which suit shall be prosecuted with dispatch to final judgment and sale unless said taxes are sooner collected.

V.

Second Party, where it is necessary to prepare and file suits for the enforced collection of delinquent taxes on real property, shall make and furnish an abstract of the property which shall show the amount of delinquent taxes due against each and every tract, lot or parcel of land, and shall show the number of acres so delinquent and a correct description of the property, the year delinquent, how it was charged upon the tax rolls, the correct name of owner or owners of the property at the time it became delinquent, the person from whom and the date that he or they derived title to said property, the Volume and page of public records that his or their deed or other title evidence is of record, and the date that each subsequent change of ownership occurred down to the present ownership. It shall further show the name of any and all outstanding lien holders and lease-hold interests of record, and all other information necessary for the proper preparation and filing of suit or suits for the collection of delinquent taxes. Second Party shall perform these services at his own cost and expense. And in case such abstract is not placed with the papers in a court proceeding, it shall be filed with the Tax Collector for the purpose of maintaining its preservation until such time as all of the taxes to which it pertains, or such part thereof as are held to be due, are paid.

VI.

Second Party shall prepare, or aid and assist the County or District Attorney in preparing, all petitions, citations, notices by publication, personal service citations, notices by posting, judgments, notices of sale, orders of sale and any and all other things necessary or required to be done for the collection of all delinquent taxes, and shall render all necessary and proper assistance to each of the other officers to the end that all taxes assessed or unknown and unrendered now delinquent, or that may become delinquent during the life of this

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contract and be so reported on Comptroller's forms provided therefor, may be collected; and when collections are not made, to assist in reducing same to final judgment and sale.

VII.

It is further agreed and understood that Second Party shall furnish, at his own expense, all stationery, legal blanks or forms, stamps, envelopes and printing, together with all labor necessary to complete said contract including labor and expense incurred in procuring data and information as to the name, identity and location of necessary parties, and in procuring necessary legal descriptions of the property as provided in Paragraph V, and the expenses incurred in citing the defendants by publication in all cases where such expenses are not collected as costs against the defendant or defendants in the tax suit, but in no event shall such cost be paid to Second Party; and Second Party shall pay off and discharge any and all bills for any other expenses incurred in the prosecution of said work, and it is hereby understood and agreed that said First Party shall not be responsible for the payment of such expense or any part thereof.

VIII.

First Party agrees to pay to Second Party as compensation for the services hereunder required 15 per cent (not to exceed fifteen (15) per cent) of the amount collected of all delinquent taxes, penalty and interest of the years covered hereby, actually collected and paid to the Collector of Taxes during the term of this contract, which Second Party is instrumental in collecting as evidenced by copies of communication, tax notices or abstracts filed with the Tax Collector prior to the payment of such tax, including collection of taxes on property not appearing on the assessment rolls nor shown delinquent, but which would have been so shown had it been properly assessed, discovered by said Second Party, as and when collected, following the end of each month within the period of this contract, accordingly as the Collector makes up his monthly reports. The amount of compensation here referred to shall be contingent upon the collection of such taxes as by Act of the Legislature are required to be collected. Should any remission of penalty and interest on taxes appearing

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on the delinquent records be made by legislative enactment effective during the period of this contract, the same shall not be collected nor commission allowed thereon. Also, ad valorem taxes, delinquent, levied against State-owned property for county and district purposes, the payment of which is to be taken care of by legislative appropriation provided for by Statute, are excluded from the provisions of this contract. Second Party shall not receive or collect any taxes, penalty or interest under this contract, but the same shall be paid to the Tax Assessor-Collector as other delinquent taxes.

## IX.

This contract shall be in force from May 11 1959, to December 31 1960, both dates inclusive, (not to extend beyond December 31, 19  , the end of the present administration of the Commissioners Court), and at the expiration of said period this contract shall terminate, except the contractor shall be allowed six (6) months in which to prosecute to trial court judgment suits filed prior to December 31, 1960, terminating date of this contract provided, and shall handle to conclusion all suits in which trial court judgments are obtained during the period of this contract and which are appealed by any party. The Commissioners Court and the State Comptroller shall have the right to sooner terminate this contract for cause, giving thirty (30) days written notice of such intention, with a statement of the cause or reasons for such termination, after giving Second Party a reasonable opportunity of explaining or rectifying the same. In case of such termination, Second Party shall be entitled to receive and retain all compensation due up to the date of said termination.

## X.

Before any commissions are paid out under the terms of this contract, Second Party shall furnish a good and sufficient bond, payable to the County Judge and to his successors in office, in the sum of 5,000.00 Dollars, (not to be less than \$5,000.00 accordingly as the Commissioners Court deems just and proper) to be executed by a solvent surety company; or if executed by private parties, the bond shall be signed by at least three good and sufficient sureties owning unincumbered real estate subject

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to execution, of value equal to the amount of bond and conditioned upon the specific performance of the terms hereof, including the making of reports, provided for in Section XI of this contract, and further conditioned that he shall forthwith pay over to the Tax-Collector, or other persons justly entitled thereto, any money or commissions paid him by mistake, through error, or otherwise. Said bond shall be approved in open Commissioners Court, signed by the County Judge, filed and recorded in the County Clerk's office, and a certified copy of same furnished to the State Comptroller.

#### XI.

At the end of each month, or as soon thereafter as the Tax Assessor-Collector shall have made up his report showing collections made for such month, said Second Party shall have access to said report and shall by comparison of the same with his own files or records of service, copies of which he has filed with the Tax Assessor-Collector, make up in triplicate a report of collections out of which he is entitled to commission under the terms of this contract. Second Party shall also have access to the Collector's receipts for such collections and shall, in his reports to be made on forms furnished by the Comptroller, show each year and the taxes collected therefor on a separate line. Also, where collections are made after suit has been filed and commission allowed at a greater or different rate under the terms of this contract Second Party, being guided by the file docket of the Clerk of the Court, shall prepare and attach to his reports to be filed with the Tax Assessor-Collector a list showing number of suit and date filed; but in no event shall Second Party receive compensation in excess of fifteen (15) per cent as herein provided. After the report has been signed and sworn to by Second Party, two copies of the same shall be delivered to the Tax Assessor-Collector, one to be attached to and sent with the Collector's monthly report to the Comptroller, the other to be filed in the Collector's office, and the third copy to be retained by Second Party.

#### XII.

Each month, after having received copies of the contractor's report as provided for in the preceding Section, and after having checked the list

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of taxes shown therein with his own report and with copies of communications filed with him, as provided for in Section XIII of this contract, and after having verified the correctness of commissions claimed, the County Tax Assessor-Collector is hereby authorized, ordered and directed to deduct the above specified per cent of said taxes, penalty and interest, or such amount as can be allowed under the penalty and interest restriction, to which Second Party is entitled, and to pay the same to him unless otherwise herein directed, and to take his receipt as provided for on Form 107, Contractor's Report, which when received in the Comptroller's office will be the Comptroller's authority to allow the said Tax Assessor-Collector credit for the amount so paid. The Tax Assessor-Collector, before complying with the provisions of this Section, shall first satisfy himself that the bond required of Second Party under the provisions of Section 10 of this contract has been approved and placed on record in the office of the County Clerk; and it is hereby further provided, that should any question arise regarding commission claimed, the Tax Assessor-Collector shall withhold the payment of such commission or an amount equal thereto, placing the same in escrow, and apply to the State and county, accordingly as they may be affected, for information and direction as to the proper amount of commission due to be allowed under the terms of this contract.

## NOTE:

Should the Commissioners Court and the contracting party elect that the commissions withheld be placed in an escrow fund and paid to the Second Party otherwise than as provided in Section XII of this contract, another Section setting forth the method of payment to the contracting party should be added to and inserted in this contract preceding the last page prepared for the signatures of the contracting parties.

## XIII.

In order that the Tax Assessor-Collector may be able to verify and attest the correctness of commissions claimed by Second Party, as evidence of service and to entitle him to the commissions provided for in this contract, Second Party shall file with the Tax Assessor-Collector prior to time of payment, copies of such communications, tax notices or abstracts which shall be preserved by the Tax Assessor-Collector in some systematical order as will make them easily accessible for the purpose of verification

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or for such other value as the same may have in case it becomes necessary for the county and State to buy in such properties at tax sales. Said copy or copies shall also contain such information or reference as will enable the Tax Assessor-Collector to readily locate the tax as it appears on his delinquent forms and delinquent records.

XIV.

It is further agreed and understood that this contract is for personal services and is not transferable or assignable without the written consent and approval of First Party. It is also agreed that the Commissioners Court of said county shall furnish suitable space in or near the courthouse, as convenient to the records of said county as may be, for the purpose of carrying out the obligations of this contract by Second Party, all of which shall be performed by him in Upshur County, Texas.

XV.

It shall be the duty of the Commissioners Court and of all other officials of said county to cooperate with and render such reasonable assistance to said Second Party as the circumstances may require. Said assistance, however, is not to include the actual performance of the work herein designated to be performed by Second Party; and it being the duty of the County Attorney or of the District Attorney (where there is no County Attorney) to actively assist Second Party in the filing and pushing to a speedy conclusion all suits for the collection of delinquent taxes, it is hereby provided that where the County Attorney or District Attorney (where there is no County Attorney) shall fail or refuse to file and prosecute such suits in good faith, the Attorney prosecuting suits under this contract is here fully empowered and authorized to proceed with such suits without the joinder and assistance of said County or District Attorney. Second party shall not become the purchaser of any property at tax sales under this contract, but may bid in the property for the State or county at such sales.

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IN CONSIDERATION of the terms and compensation herein stated, the Second Party hereby accepts said employment and undertakes the performance of said contract as above written.

WITNESS the signatures of all parties hereto in triplicate originals, this the 11th day of May, A. D. 1959, Upshur County, State of Texas.

BY:

*Walter B. Hunt*  
County Judge

*Jim Shoveray*  
Commissioner, Precinct No. 1

*Raymond Adams*  
Commissioner, Precinct No. 2

*Joe Spencer*  
Commissioner, Precinct No. 3

*Harold Mason*  
Commissioner, Precinct No. 4

FIRST PARTY

*Edwin M. Fulton*  
SECOND PARTY  
Edwin M. Fulton

THE STATE OF TEXAS  
DEPARTMENT OF COMPTROLLER

Examined and approved as to substance and form only, on this the 28 day of May, A. D., 1959.

*Robert A. Colvert*  
COMPTROLLER  
OF PUBLIC ACCOUNTS, STATE OF TEXAS

Examined and approved as to substance and form only, on this the 28th day of May, A. D., 1959.

*W. Lee P. Williams*  
ATTORNEY GENERAL

*all  
noted B.G.*

THE STATE OF TEXAS  
COUNTY OF UPSHUR

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I, the undersigned, County Clerk of said county, certify that the above and foregoing is a true and correct copy of a contract recorded in Volume 12, Page 331 in the Minutes of the Commissioners Court of said county.

WITNESS my hand and seal of said Court on this the 1 day of July, A. D. 19 59.

CLERK OF COUNTY CLERK

O W Lloyd  
COUNTY CLERK

THE STATE OF TEXAS |  
COUNTY OF UPSHUR |

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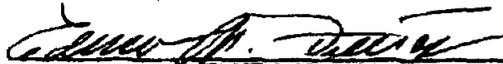
WHEREAS, Edwin M. Fulton, a licensed attorney, whose address is Box 500, Gilmer, Texas, has, by means of a written agreement, dated May 11, 1959, entered into a contract with the Commissioners' Court of Upshur County, for the collection of certain delinquent State and County taxes, during the term beginning May 11, 1959, and ending December 31, 1960, a copy of which agreement is by reference made a part hereof; and

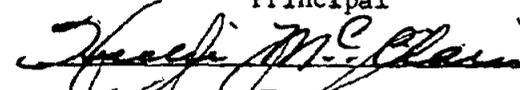
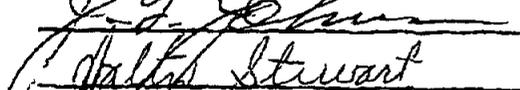
WHEREAS, by Section X of said contract the said Edwin M. Fulton is required to enter into a bond in the sum of \$5,000.00;

Now, therefore, KNOW ALL MEN BY THESE PRESENTS: That we, Edwin M. Fulton, as Principal, and the others whose names are hereto subscribed, as Sureties, are held and firmly bound unto Welby Parish, County Judge of Upshur County, Texas, and his successors in office, in the sum of FIVE THOUSAND (\$5,000.00) DOLLARS, for payment of which we hereby bind ourselves, our heirs, executors and administrators, jointly and severally;

CONDITIONED, that if the said Edwin M. Fulton shall faithfully perform the services required of him, by the terms of said contract, including the making of reports provided in Section XI thereof, and shall fully indemnify and save harmless the County of Upshur from all costs or damage which it may suffer by reason of his failure to do so, and shall fully reimburse and repay the said County of Upshur all outlay and expense which the said County may incur in making good any such default, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

WITNESS OUR HANDS this 19th day of June, A.D. 1959.

  
EDWIN M. FULTON  
Principal

  
  
  
Sureties.

THE STATE OF TEXAS |

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COUNTY OF UPSHUR |

The foregoing bond of Edwin M. Fulton, holding contract for collection of State and County delinquent taxes in Upshur County, Texas, was read and approved in open Commissioners' Court this 30 day of June, A.D. 1959.

*W. Parish*  
\_\_\_\_\_  
WELBY PARISH, Judge  
County Court, Upshur County, Texas

THE STATE OF TEXAS |

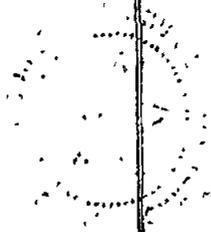
COUNTY OF UPSHUR |

I, O. W. Loyd, Clerk of the County Court of Upshur County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the bond of Edwin M. Fulton, delinquent tax collector of Upshur County, Texas, as the same appears of record in Volume 12, Page 341, Minutes of the Commissioners' Court of Upshur County, Texas.

WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE, This 1 day of July, A.D. 1959.

*O. W. Loyd*  
\_\_\_\_\_  
O. W. LOYD, Clerk  
County Court, Upshur County, Texas

BY: *E. Gordon*  
\_\_\_\_\_  
Deputy





6.1

WAIVER OF NOTICE AND CONSENT  
TO SPECIAL MEETING

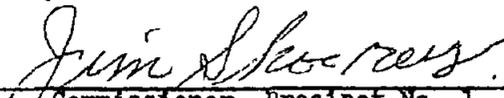
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THE STATE OF TEXAS |  
COUNTY OF UPSHUR |

WE, THE UNDERSIGNED, being all the members of the Commissioners' Court of Upshur County, Texas, DO HEREBY WAIVE notice of a special meeting of said Court, to be held at 10 o'clock A M., on the 10th day of November, 1958, and DO WARRANT the holding of such meeting and to the transaction of any and all business that may come before such meeting, including passage of an order for Hospital Bond Election.

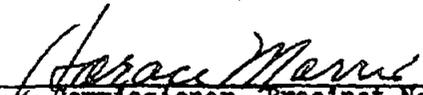
DATED at Gilmer, Texas, this the 10th day of November, 1958.

  
\_\_\_\_\_  
County Judge, Upshur County,  
Texas

  
\_\_\_\_\_  
Commissioner, Precinct No. 1

\_\_\_\_\_  
Commissioner, Precinct No. 2

  
\_\_\_\_\_  
Commissioner, Precinct No. 3

  
\_\_\_\_\_  
Commissioner, Precinct No. 4.

ORDER CANVASSING RETURNS AND DECLARING  
RESULT OF HOSPITAL BOND ELECTION

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THE STATE OF TEXAS  
COUNTY OF UPSHUR

ON THIS, the 7 day of November, 1958, the Commissioners' Court of Upshur County, Texas, convened in Special session, at the regular meeting place thereof in the Courthouse at Gilmer, Texas, the following members of the Court being present and in attendance, to-wit:

|                |                               |
|----------------|-------------------------------|
| J. W. BRYCE,   | COUNTY JUDGE, Presiding; and  |
| JIM SHOCKEY    | COMMISSIONER, Precinct No. 1; |
| BRYANT HOLMES, | COMMISSIONER, Precinct No. 2; |
| CLOE SPENCER,  | COMMISSIONER, Precinct No. 3; |
| HORACE MORRIS, | COMMISSIONER, Precinct No. 4  |

and the following proceedings were had:

There came on to be considered the returns of an election held on the 4th day of November, 1958, to determine whether the Commissioners' Court of Upshur County, Texas, shall be authorized to issue the bonds of said County in the amount of \$300,000 for the purpose of establishing and equipping a County Hospital and for all necessary permanent improvements and buildings in connection therewith; and

IT APPEARING to the Court that said election on the proposition for the issuance of Hospital Bonds was in all respects lawfully held, and returns thereof duly and legally made, and that there were cast at said election 2534 votes, of which number there were cast--