

Owen County Fiscal Court
100 North Thomas Street
Owenton, Kentucky 40359

Office: (502) 484-3405
Fax: (502) 484-1004
www.owencountyky.us



Casey Ellis
County Judge/Executive

Magistrates
Todd Spurgeon, District 1
Stuart Bowling, District 2
Wayne Harris, District 3
Chad Rose, District 4

ORDINANCE NO. 223

AN ORDINANCE OF THE FISCAL COURT OF THE COUNTY OF OWEN, KENTUCKY AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$71,390,000 IN AGGREGATE PRINCIPAL AMOUNT OF "COUNTY OF OWEN, KENTUCKY WATER FACILITIES REFUNDING REVENUE BONDS (KENTUCKY-AMERICAN WATER COMPANY PROJECT) SERIES 2019A AND SERIES 2019B"; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN SAID COUNTY AND KENTUCKY-AMERICAN WATER COMPANY, A KENTUCKY CORPORATION, AND ITS CORPORATE AFFILIATE, AMERICAN WATER CAPITAL CORP., PROVIDING FOR THE LOAN OF THE PROCEEDS OF SAID BONDS FROM SAID COUNTY TO SAID COMPANIES TO REFUND A LIKE PRINCIPAL AMOUNT OF BONDS PREVIOUSLY ISSUED BY SAID COUNTY FOR THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF A WATER TREATMENT PLANT LOCATED IN SAID COUNTY TO SERVE THE GENERAL PUBLIC; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE FROM SAID COUNTY TO THE BANK OF NEW YORK MELLON, AS TRUSTEE, SECURING SAID BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT BETWEEN SAID COUNTY AND J.P. MORGAN SECURITIES LLC AS THE UNDERWRITER OF SAID BONDS; AUTHORIZING THE ACCEPTANCE OF AN INDUCEMENT LETTER BY SAID COUNTY FROM SAID COMPANIES; AND RELATED MATTERS.

WHEREAS, the County of Owen, Kentucky (the "County") has a compelling interest in promoting economic development, relieving conditions of unemployment and encouraging the increase of industry in the Commonwealth of Kentucky (the "Commonwealth"), and pursuant to the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (the "Act"), the County is specifically authorized and empowered to borrow money through the issuance and sale of negotiable bonds and to loan the proceeds from the sale of such bonds to any person, including any industrial concern or utility company, to finance the acquisition of any "industrial building" as defined in the Act; and

WHEREAS, the Act provides that any bonds issued and outstanding thereunder may, at any time on or after their earliest redemption date, be refunded by the issuer thereof, with the consent of such industrial concern or utility company, in such amount as the governing body of such issuer may deem necessary to refund the principal of the bonds to be refunded; and

WHEREAS, the Act provides that any refunding bonds issued under the authority of Section 103.220 thereof shall be payable from the revenues out of which the bonds to be refunded were payable; and

WHEREAS, pursuant to Ordinance No. 163 adopted by the Fiscal Court of the County on May 28, 2009, the County has previously issued its Waterworks System Revenue Bonds, 2009 Series A (Kentucky-American Water Company Project) in the principal amount of \$45,390,000 (the “2009 Series A Bonds”), all of which are outstanding, and loaned the proceeds from the sale thereof to Kentucky-American Water Company, a Kentucky corporation and a regulated public utility company (the “Operating Company”), and its corporate affiliate, American Water Capital Corp., a Delaware corporation (the “Financing Company”), to finance facilities for the furnishing of water by the Operating Company that is available on reasonable demand to members of the general public constituting an “industrial building” within the meaning of the Act; and

WHEREAS, pursuant to Ordinance No. 166 adopted by the Fiscal Court of the County on August 25, 2009, the County has previously issued its Waterworks System Revenue Bonds, 2009 Series B (Kentucky-American Water Company Project) in the principal amount of \$26,000,000 (the “2009 Series B Bonds”), all of which are outstanding, and loaned the proceeds from the sale thereof to the Operating Company and the Financing Company (together, the “Companies”), to finance facilities for the furnishing of water by the Operating Company that is available on reasonable demand to members of the general public constituting an “industrial building” within the meaning of the Act; and

WHEREAS, the water furnishing facilities acquired, constructed, installed and equipped by the Operating Company with the proceeds of the 2009 Series A Bonds and the 2009 Series B Bonds consist of a water treatment plant at Pool No. 3 of the Kentucky River located within the corporate boundaries of the County; and

WHEREAS, the Companies have requested the County to issue its refunding revenue bonds in two series in the aggregate principal amount of not to exceed \$71,390,000 in order to refund all or part of the 2009 Series A Bonds and the 2009 Series B Bonds; and

WHEREAS, the proceeds of the County’s Water Facilities Refunding Revenue Bonds (Kentucky-American Water Company Project) Series 2019A in the principal amount of not to exceed \$45,390,000 (the “Series 2019A Bonds”) will be loaned to the Companies for the purpose of refunding a like principal amount of the 2009 Series A Bonds pursuant to a Loan Agreement between the County and the Companies under which the Companies will be jointly and severally liable to make loan repayments sufficient to provide for the payment of the principal of, and the interest and premium, if any, on, the Series 2019A Bonds as and when the same become due and payable and to make such other payments and satisfy such other obligations as may be required by the Act with respect to the Series 2019A Bonds (the “Loan Agreement”); and

WHEREAS, the proceeds of the County’s Water Facilities Refunding Revenue Bonds (Kentucky-American Water Company Project) Series 2019B in the principal amount of not to exceed \$26,000,000 (the “Series 2019B Bonds”) will be loaned to the Companies for the purpose of refunding a like principal amount of the 2009 Series B Bonds pursuant to the Loan Agreement under which the Companies also will be jointly and severally liable to make loan repayments

sufficient to provide for the payment of the principal of, and the interest and premium, if any, on, the Series 2019B Bonds as and when the same become due and payable and to make such other payments and satisfy such other obligations as may be required by the Act with respect to the Series 2019B Bonds; and

WHEREAS, the Series 2019A Bonds and the Series 2019B Bonds will be issued under and pursuant to, and are to be secured by, a Trust Indenture (the “Indenture”) by and between the County and The Bank of New York Mellon, as trustee (the “Trustee”); and

WHEREAS, it is proposed that the Series 2019A Bonds and the Series 2019B Bonds will be sold by the County to J.P. Morgan Securities LLC (the “Underwriter”) pursuant to a Bond Purchase Agreement (the “Bond Purchase Agreement”) between the County and the Underwriter; and

WHEREAS, it is proposed that the Companies will deliver to the County and the Underwriter an Inducement Letter, in order to induce the County and the Underwriter to enter into the Bond Purchase Agreement (the “Inducement Letter”), setting forth certain representations, warranties and covenants of the Companies in connection with the sale of the Series 2019A Bonds and the Series 2019B Bonds to the Underwriter; and

WHEREAS, as provided in the Act, none of the Series 2019A Bonds or the Series 2019B Bonds shall constitute an indebtedness of the County within the meaning of the Constitution of Kentucky, but such Bonds shall be payable as to principal and interest solely from the revenues derived from the loan repayments made by the Companies pursuant to the Loan Agreement in respect of the loans of the proceeds thereof from the County to the Companies; none of the Series 2019A Bonds or the Series 2019B Bonds will be general obligations of the County, nor will the interest thereon constitute or give rise to a charge against the general credit or taxing power of the County; and no part of said costs with respect to the Series 2019A Bonds and the Series 2019B Bonds will be payable out of any general funds, revenues, assets, properties or other contributions of the County; and

WHEREAS, pursuant to the provisions of Section 103.230 of the Act, the Companies have made a request in writing, addressed to the County Judge/Executive, that the sale of the Series 2019A Bonds and the Series 2019B Bonds, hereinafter authorized, bearing interest at the rate or rates to be specified in the Indenture, shall be made privately upon a negotiated basis, and said writing is on file in the office of the Fiscal Court Clerk of the County; and

WHEREAS, it is necessary and proper and in the interests of the citizens, residents and inhabitants of the County and the Commonwealth to promote economic development, relieve conditions of unemployment and encourage the increase of industry in the County and the Commonwealth, and, in connection therewith, that the County (a) authorize the issuance of the Series 2019A Bonds and the Series 2019B Bonds and the loan of the proceeds thereof to the Companies for the purposes hereinabove set forth; (b) authorize the execution and delivery of the Loan Agreement, in substantially the form attached to this Ordinance, to be appropriately dated, by and between the County, as lender, and the Companies, which will be jointly and severally liable for the payment of all principal, interest and premium on the Series 2019A Bonds and the Series 2019B Bonds; (c) authorize the execution and delivery of the Indenture, in substantially

the form attached to this Ordinance, to be appropriately dated, by and between the County and the Trustee; (d) authorize and approve the sale of the Series 2019A Bonds and the Series 2019B Bonds to the Underwriter pursuant to the Bond Purchase Agreement, in substantially the form attached to this Ordinance, to be appropriately dated, by and between the County and the Underwriter and in that regard make determinations as to the offering and sale of such Bonds; and (e) authorize the acceptance of the Inducement Letter, in substantially the form attached to this Ordinance, to be appropriately dated, from the Companies to the County and the Underwriter.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE FISCAL COURT OF THE COUNTY OF OWEN, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

SECTION 1

For the purposes set forth in the preamble, there is hereby authorized and directed the following:

(A) The incorporation by reference of the preambles of this Ordinance as integral parts of this Ordinance, to the same extent as if repeated herein verbatim, it being declared that the statements of fact set forth in such preambles are true and accurate in all respects.

(B) The authorization, execution, sale, delivery and issuance of not to exceed \$45,390,000 in principal amount of the Series 2019A Bonds, bearing interest at such interest rates fixed or determined from time to time according to a specified standard and procedure and at rates not to exceed the Maximum Rate, as provided in the Indenture, and maturing at such time not later than June 1, 2039, and being in substantially the form and subject to all the terms and specifications set forth in the Indenture, in substantially the form appended hereto as "EXHIBIT A."

The authorization, execution, sale, delivery and issuance of not to exceed \$26,000,000 in principal amount of the Series 2019B Bonds, bearing interest at such interest rates fixed or determined from time to time according to a specified standard and procedure and at rates not to exceed the Maximum Rate, as provided in the Indenture, and maturing at such time not later than September 1, 2039, and being in substantially the form and subject to all the terms and specifications set forth in the Indenture, in substantially the form appended hereto as "EXHIBIT A."

It is a condition to the authorization and issuance of the Series 2019A Bonds and the Series 2019B Bonds that both the Operating Company and the Financing Company agree to become jointly and severally liable for the payment under the Loan Agreement of amounts sufficient to provide for the payment of all principal, interest and premium on the Series 2019A Bonds and the Series 2019B Bonds, which joint and several liability may be evidenced by the direct loan of the proceeds of the Series 2019A Bonds and the Series 2019B Bonds to the Financing Company for simultaneous loan of all such proceeds to the Operating Company to refund a like principal amount of the 2009 Series A Bonds and a like principal amount of the 2009 Series B Bonds, with both of such entities assuming joint and several liability for the payment under the Loan Agreement of amounts sufficient to provide for the payment of the Series 2019A Bonds and the Series 2019B Bonds.

(C) The loan of the proceeds of the Series 2019A Bonds to the Companies, as provided in the Loan Agreement, to refund a like principal amount of the 2009 Series A Bonds.

The loan of the proceeds of the Series 2019B Bonds to the Companies, as provided in the Loan Agreement, to refund a like principal amount of the 2009 Series B Bonds.

(D) The principal of, and premium, if any, and interest on, the Series 2019A Bonds and the Series 2019B Bonds are and shall be payable solely and only from the loan repayments made by or on behalf of the Companies under the Loan Agreement, as pledged pursuant to the Indenture. The Series 2019A Bonds and the Series 2019B Bonds, and the interest and premium, if any, thereon, do not represent or constitute an indebtedness of the County or the Commonwealth or any political subdivision of the Commonwealth within the meaning of the provisions of the Constitution or statutes of the Commonwealth or a pledge of the faith and credit of the County, the Commonwealth or any political subdivision thereof. No funds or assets of the County are or shall ever be used to pay the Series 2019A Bonds or the Series 2019B Bonds.

SECTION 2

In order to provide for the refunding of a like principal amount of the 2009 Series A Bonds and the 2009 Series B Bonds, the County Judge/Executive is hereby authorized, empowered and directed to execute, deliver and acknowledge on behalf of the County the Loan Agreement, hereby authorized and approved, and the Fiscal Court Clerk is hereby authorized, empowered and directed to execute, deliver, acknowledge and affix the official seal of the County thereto, and to attest the same, the Loan Agreement to be in substantially the form appended hereto as "EXHIBIT B."

SECTION 3

In order to provide for the authorization, and to secure the Series 2019A Bonds and the Series 2019B Bonds to be issued pursuant to the Act and this Ordinance, to make the loans of the proceeds of said Bonds and to prescribe the terms and conditions upon which the Series 2019A Bonds and the Series 2019B Bonds are to be secured, executed, delivered, authenticated, accepted and held, the County Judge/Executive is hereby authorized, empowered and directed to execute, deliver and acknowledge on behalf of the County the Indenture, hereby authorized and approved, and the Fiscal Court Clerk is hereby authorized, empowered and directed to execute, deliver, acknowledge and affix the official seal of the County thereto, and to attest the same, and the County Judge/Executive and the Fiscal Court Clerk are hereby authorized, empowered and directed to cause the Indenture to be accepted, executed, delivered and acknowledged by the Trustee, the Indenture to be in substantially the form appended hereto as "EXHIBIT A."

SECTION 4

The County Judge/Executive, the County Attorney, the Fiscal Court Clerk and all other County officials and employees, for and on behalf of the County, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution and delivery of the Indenture, its execution, delivery and acceptance by the Trustee, the performance of all obligations of the County under and pursuant to the Indenture, the execution

and delivery of the Series 2019A Bonds and the Series 2019B Bonds and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and by the Indenture. The County Judge/Executive, the County Attorney, the Fiscal Court Clerk and all other officials of the County are hereby further authorized, empowered and directed, for and on behalf of the County, to execute and deliver or to approve the execution and delivery by the Companies, the Underwriter, bond insurance entities, credit facility providers, banks and trust companies and other relevant parties of all customary papers, documents, certificates or other instruments, including but not limited to a continuing disclosure agreement and book-entry documents with The Depository Trust Company, that may be required for the carrying out and effectuation of the authority conferred by this Ordinance and the Indenture, or to evidence said authority, and to exercise and otherwise take all actions necessary to the full realization of the rights, accomplishments and purposes of the County under the Loan Agreement, and to discharge all of the obligations of the County as lender under the Loan Agreement.

SECTION 5

In order to ensure that the Series 2019A Bonds and the Series 2019B Bonds satisfy the requirements of the Internal Revenue Code of 1986, as amended, any of the County Judge/Executive, the County Treasurer and other County officers charged with responsibility for the issuance of such Bonds are hereby authorized, empowered, and directed to execute, acknowledge and deliver on behalf of the County a certificate or agreement relating to tax matters, including, Treasury Regulation 1.148-2(b)(2) in respect of arbitrage bond compliance and in customary form, hereby approved and requiring no further action by the Fiscal Court of the County.

SECTION 6

The Series 2019A Bonds and the Series 2019B Bonds shall be offered and sold to the Underwriter pursuant to the Bond Purchase Agreement, in substantially the form appended hereto as "EXHIBIT C," to be dated the date of execution thereof, at the prices and interest rates to be set forth therein, as authorized, approved and confirmed by the Companies. The County Judge/Executive and the Fiscal Court Clerk are hereby authorized and empowered to execute and approve, for and on behalf of the County, the Bond Purchase Agreement upon approval, execution and delivery thereof by the Underwriter and the execution and delivery by the Companies of the Inducement Letter and the acceptance by the County and the Underwriter of the Inducement Letter, provided that (a) the purchase price of each of the Series 2019A Bonds and the Series 2019B Bonds shall be at least 100% of the principal amount thereof, and (b) the interest rate to be borne by each of the Series 2019A Bonds and the Series 2019B Bonds shall be (i) if issued in a Term Interest Rate Period under the Indenture on the date of issuance thereof, not in excess of 7.50% per annum, (ii) if issued in an Index Interest Rate Period or a SIFMA Interest Rate Period under the Indenture, determined in accordance with the procedures set forth in the Indenture and (iii) if issued in a Variable Interest Rate Period under the Indenture, a variable interest rate determined in accordance with the procedures set forth in the Indenture. The Companies shall indemnify and hold harmless the County and its elected and appointed officers with respect to all matters concerning such offering, sale and issuance of the Series 2019A Bonds and the Series 2019B Bonds as provided in the Bond Purchase Agreement and the

Inducement Letter. The County and its elected and appointed officers shall incur no liability whatsoever with respect to the Series 2019A Bonds and the Series 2019B Bonds. The sale and award to the Underwriter of the Series 2019A Bonds and the Series 2019B Bonds pursuant to such authority and direction is hereby authorized and approved and shall require no further action by the Fiscal Court of the County. The form, terms and provisions of the Inducement Letter, in substantially the form appended hereto as "EXHIBIT D," to be dated the date of execution thereof, and containing substantially the terms and provisions set forth therein, are hereby approved, and, in any sale of the Series 2019A Bonds and the Series 2019B Bonds to the Underwriter pursuant to the Bond Purchase Agreement, the County Judge/Executive is hereby authorized and directed to accept the Inducement Letter on behalf of the County by executing the same and delivering a copy thereof to the Companies.

SECTION 7

The use by the Underwriter of a Preliminary Official Statement and/or Final Official Statement (each as defined in the Bond Purchase Agreement) relating to the Series 2019A Bonds and the Series 2019B Bonds in connection with the offering of such Bonds to the public is hereby authorized and approved; provided, that the County neither has nor assumes any responsibility as to the accuracy or completeness of any of the information contained in any such Preliminary Official Statement or Official Statement except that the County Judge/Executive and the Fiscal Court Clerk are hereby authorized and empowered to make statements approved by the County Attorney under captions therein describing the organization of the County and actions taken by the County to approve the issuance of the Series 2019A Bonds and the Series 2019B Bonds and/or describing any litigation, or the absence thereof, as it might affect the issuance of the Series 2019A Bonds and the Series 2019B Bonds by the County.

SECTION 8

No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Series 2019A Bond or Series 2019B Bond, or in the Loan Agreement, the Indenture, the certificate or agreement relating to tax matters or the Bond Purchase Agreement, or under any judgment or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the County, either directly or through the County, or otherwise, for the payment for or to any receiver thereof, or for or to any holder of any Series 2019A Bond or Series 2019B Bond, or otherwise, of any sum that may be due and unpaid upon, any of the Series 2019A Bonds or the Series 2019B Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or the owner or any holder of any Series 2019A Bond or Series 2019B Bond, or otherwise, of any sum that may remain due and unpaid upon any Series 2019A Bond or Series 2019B Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement, the Indenture, the certificate or agreement relating to tax matters or any closing certificates required under the Bond Purchase Agreement, the Bond Purchase Agreement, and the issuance of the Series 2019A Bonds and the Series 2019B Bonds.

SECTION 9

The County Judge/Executive, the Fiscal Court Clerk, the County Treasurer, the County Attorney and other County officers charged with responsibility in connection with the issuance of the Series 2019A Bonds and the Series 2019B Bonds, or any of them, are hereby authorized, empowered and directed to execute, attest, seal and deliver any and all documents, and do any and all things, deemed necessary to effect the issuance and delivery of the Series 2019A Bonds and the Series 2019B Bonds and the execution, delivery and acceptance of the instruments authorized hereby, and to carry out the provisions of such instruments and the intent and purpose of this Ordinance, including the preamble hereto.

SECTION 10

The provisions of this Ordinance are hereby declared to be severable and, if any section, phrase or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION 11

All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 12

This Ordinance shall be in full force and effect from and after its adoption and approval and the publication of a summary thereof as provided by law.

GIVEN FIRST READING APPROVAL at a duly convened meeting of the Fiscal Court of the County of Owen, Kentucky, held on the 24th day of September, 2019.

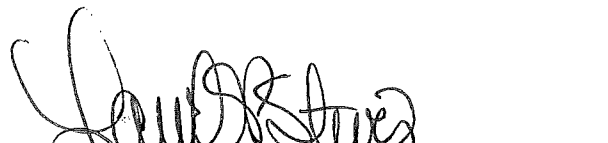
GIVEN SECOND READING AND ADOPTED at a duly convened meeting of the Fiscal Court of the County of Owen, Kentucky, held on the 14th day of October, 2019, on the same occasion signed in open session by the County Judge/Executive as evidence of his approval, attested by the Fiscal Court Clerk, and ordered to be enrolled and published in accordance with law.

(SEAL)



ROBERT CASEY ELLIS
County Judge/Executive

ATTEST:

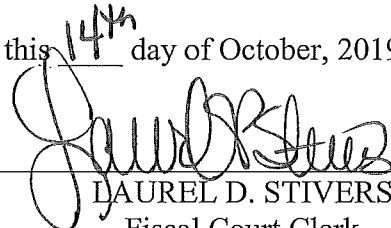

LAUREL D. STIVERS
Fiscal Court Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am a duly qualified and acting Fiscal Court Clerk of the Fiscal Court of Owen County, Kentucky, and as such official, I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly adopted on second reading by said Fiscal Court at a meeting held on October 14, 2019, on the same occasion signed by the County Judge/Executive and now in full force and effect, all as appears from the official records of said Fiscal Court.

WITNESS my hand and the seal of said Court, this 14th day of October, 2019.

(SEAL)



LAUREL D. STIVERS
Fiscal Court Clerk

EXHIBIT A
INDENTURE

EXHIBIT B

LOAN AGREEMENT

EXHIBIT C

BOND PURCHASE AGREEMENT

EXHIBIT D

INDUCEMENT LETTER

