

**CORPORATION OF HAMILTON**

**Annual Financial Statements**

(With Independent Auditor's Report Thereon)

December 31, 2022

*The accompanying report of KPMG Audit Limited ("KPMG") is for the sole and exclusive use of the Corporation of Hamilton (the "Corporation"). No person, other than the Corporation, is authorised to rely upon the report of KPMG unless KPMG expressly so authorises. Furthermore, the report of KPMG is as of June 30, 2023 and KPMG has carried out no procedures of any nature subsequent to that date which in any way extends that date.*



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## **INDEPENDENT AUDITOR'S REPORT**

### **To the Members of Corporation of Hamilton**

#### **Opinion**

We have audited the financial statements of Corporation of Hamilton (the "Corporation"), which comprise the statement of financial position as at December 31, 2022, the statements of operations, changes in accumulated surplus, net debt and cash flows for the year then ended, and notes, comprising significant accounting policies and other explanatory information.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Corporation as at December 31, 2022, and its financial performance and its cash flows for the year then ended in accordance with Public Sector Accounting Standards generally accepted in Bermuda and Canada ("PSAS").

#### **Basis for opinion**

We conducted our audit in accordance with International Standards on Auditing ("ISA"). Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial statements* section of our report. We are independent of the Corporation in accordance with the International Ethics Standards Board for Accountants International Code of Ethics for Professional Accountants (including International Independence Standards) ("IESBA Code") together with the ethical requirements that are relevant to our audit of the financial statements in Bermuda, and we have fulfilled our other ethical responsibilities in accordance with these requirements and the IESBA Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### **Emphasis of matter**

We draw attention to Notes 2, 12 and 13 of the financial statements, which describe the potential impact on the Corporation of ongoing legal proceedings against the Corporation. The ultimate outcome of this matter cannot presently be determined and, accordingly, no provision for any financial effects on the Corporation that may result has been made in the financial statements. Our opinion is not modified in respect of this matter.

#### **Responsibilities of management and those charged with governance for the financial statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with PSAS, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Corporation's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Corporation or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Corporation's financial reporting process.



## Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISA will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISA, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Corporation's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Corporation's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Corporation to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

*KPMG Audit Limited*

Chartered Professional Accountants  
Hamilton, Bermuda  
June 30, 2023

**CORPORATION OF HAMILTON**

## Statement of Financial Position

December 31, 2022

*(Expressed in Bermuda Dollars)*

	<u>2022</u>	<u>2021</u>
<b>Financial assets</b>		
Cash and cash equivalents	\$ 1,014,185	\$ 1,478,989
Short-term deposits	3,383,143	3,881,773
Accounts receivable, net (Notes 3 and 10)	1,835,826	1,294,019
Recoverable costs	<u>91,214</u>	<u>51,812</u>
Total financial assets	<u>6,324,368</u>	<u>6,706,593</u>
<b>Liabilities</b>		
Accounts payable and accrued liabilities (Notes 4 and 10)	8,010,604	7,848,194
Pension plans and other post-retirement benefits (Note 6)	<u>707,717</u>	<u>794,585</u>
Total liabilities	<u>8,718,321</u>	<u>8,642,779</u>
<b>Net debt</b>	<u>(2,393,953)</u>	<u>(1,936,186)</u>
<b>Non-financial assets</b>		
Tangible capital assets, net (Note 5)	72,210,735	70,949,084
Inventory of materials and supplies	155,127	151,715
Prepaid expenses	<u>78,223</u>	<u>129,169</u>
Total non-financial assets	<u>72,444,085</u>	<u>71,229,968</u>
<b>Accumulated surplus</b>	<u>\$ 70,050,132</u>	<u>\$ 69,293,782</u>

*The accompanying notes are an integral part of the financial statements.*

Signed on behalf of the Corporation of Hamilton:



John Harvey MBE JP, Acting Mayor



Tanya Iris, Chief Financial Officer

**CORPORATION OF HAMILTON**

## Statement of Operations

For the Year Ended December 31, 2022  
*(Expressed in Bermuda Dollars)*

	Budget 2022 (Note 2(b))	Actual 2022	Actual 2021
<b>Revenue</b>			
Property taxes	\$ 8,659,748	\$ 8,643,233	\$ 8,698,612
Goods wharfage (Note 3)	7,200,000	7,742,599	7,147,099
Car parking fees	3,583,717	4,319,952	3,325,184
Sewage disposal contracts	2,439,933	2,440,528	2,428,500
Rents from properties	662,368	670,468	568,533
Other permit and license fees	427,944	435,108	433,534
Sewage tax	430,392	428,146	429,328
Ships wharfage	242,400	242,926	331,504
Dock charges	360,000	433,516	284,548
Miscellaneous	115,098	104,380	106,504
City Hall rents	50,000	68,956	26,680
Interest	<u>33,873</u>	<u>9,568</u>	<u>25,187</u>
 Total revenue (Note 11)	 <u>24,205,473</u>	 <u>25,539,380</u>	 <u>23,805,213</u>
 <b>Expenditures</b>			
Administrative and general expenses	8,609,924	8,364,897	7,940,973
Sanitation services	3,534,752	3,482,757	3,329,189
Street operations and maintenance	3,402,765	3,226,534	2,895,713
Works depot expenses	2,574,946	2,556,396	2,471,333
Parks and gardens maintenance	2,015,302	1,944,499	1,860,075
Wharf operations and maintenance	1,407,805	1,281,264	1,309,730
Car parks expenses	1,564,896	1,392,770	859,412
City Hall maintenance	1,149,124	1,171,830	856,550
Sewerage maintenance and operating	869,125	794,482	740,171
Interest and finance charges	216,534	194,443	172,991
Property maintenance	329,660	256,451	147,988
Bad debt expense	<u>39,000</u>	<u>116,707</u>	<u>22,658</u>
 Total expenditures (Notes 8 and 11)	 <u>25,713,833</u>	 <u>24,783,030</u>	 <u>22,606,783</u>
 Excess (deficit) of revenue over expenditures	 <u>\$ (1,508,360)</u>	 <u>\$ 756,350</u>	 <u>\$ 1,198,430</u>

*The accompanying notes are an integral part of the financial statements.*

**CORPORATION OF HAMILTON**

Statement of Changes in Accumulated Surplus

For the Year Ended December 31, 2022  
*(Expressed in Bermuda Dollars)*

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	<u>2022</u>	<u>2021</u>
Accumulated surplus, beginning of year	\$ 69,293,782	\$ 68,095,352
Excess of revenue over expenditures	<u>756,350</u>	<u>1,198,430</u>
Accumulated surplus, end of year	<u>\$ 70,050,132</u>	<u>\$ 69,293,782</u>

*The accompanying notes are an integral part of the financial statements.*

**CORPORATION OF HAMILTON**

## Statement of Changes in Net Debt

For the Year Ended December 31, 2022  
(Expressed in Bermuda Dollars)

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	<u>2022</u>	<u>2021</u>
Excess of revenue over expenditures	\$ 756,350	\$ 1,198,430
Acquisition of tangible capital assets, net	(3,704,285)	(3,868,444)
Amortization of tangible capital assets, net	2,442,634	2,386,059
Acquisition of inventory	(328,517)	(349,923)
Consumption of inventory	325,105	387,446
Acquisition of prepaid expenses	(358,816)	(429,865)
Consumption of prepaid expenses	<u>409,762</u>	<u>387,664</u>
Increase in net debt	(457,767)	(288,633)
Net debt, beginning of year	<u>(1,936,186)</u>	<u>(1,647,553)</u>
Net debt, end of year	\$ <u>(2,393,953)</u>	\$ <u>(1,936,186)</u>

*The accompanying notes are an integral part of the financial statements.*

**CORPORATION OF HAMILTON**

## Statement of Cash Flows

For the Year Ended December 31, 2022  
(Expressed in Bermuda Dollars)

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	<u>2022</u>	<u>2021</u>
<b>Cash flows from operating activities</b>		
Excess of revenue over expenditures	\$ 756,350	\$ 1,198,430
Adjustment for non-cash items:		
Amortization of tangible capital assets, net	2,442,634	2,386,059
Changes in non-cash working capital balances:		
(Increase) decrease in accounts receivable	(541,807)	45,093
Increase in recoverable costs	(39,402)	(27,227)
Increase in accounts payable and accrued liabilities	162,410	1,107,626
Decrease in pension plans and other post-retirement benefits	(86,868)	(94,355)
(Increase) decrease in inventory of materials and supplies	(3,412)	37,523
Decrease (increase) in prepaid expenses	<u>50,946</u>	<u>(42,201)</u>
Net cash from operating activities	<u>2,740,851</u>	<u>4,610,948</u>
<b>Cash flows from investing activities</b>		
Acquisition of tangible capital assets, net	(3,704,285)	(3,868,444)
Net investment in short-term deposits	<u>498,630</u>	<u>(16,174)</u>
Net cash used in investing activities	<u>(3,205,655)</u>	<u>(3,884,618)</u>
Net (decrease) increase in cash and cash equivalents	(464,804)	726,330
Cash and cash equivalents, beginning of year	<u>1,478,989</u>	<u>752,659</u>
Cash and cash equivalents, end of year	\$ 1,014,185	\$ 1,478,989
	<u><u>                    </u></u>	<u><u>                    </u></u>
<b>Supplemental cash flow disclosure:</b>		
Interest received for the year	\$ 6,138	\$ 24,422
	<u><u>                    </u></u>	<u><u>                    </u></u>

*The accompanying notes are an integral part of the financial statements.*



## CORPORATION OF HAMILTON

### Statement of Cash Flows

For the Year Ended December 31, 2022  
(Expressed in Bermuda Dollars)

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#### 1. General

The Corporation of Hamilton (the "Corporation") is responsible for the provision of certain municipal services within the boundaries of the City of Hamilton (the "City") in accordance with the Municipalities Act 1923 (the "Act") as subsequently amended. The principal sources of revenue include property taxes, goods wharfage, sewage disposal and car parking fees. The various expenditures are controlled by committees established for sanitation, sewerage, wharfs, parks, properties, streets, finance and City Hall.

#### 2. Significant accounting policies

These financial statements have been prepared in accordance with Public Sector Accounting Standards generally accepted in Bermuda and Canada ("PSAS") as provided by the Public Sector Accounting Board ("PSAB") of the Chartered Professional Accountants of Canada ("CPA Canada").

##### (a) Basis of preparation

###### (i) Use of estimates

The preparation of financial statements in accordance with PSAS requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenditures for the year. Actual amounts could differ from those estimates. Significant areas requiring the use of management estimates and assumptions are described in the following notes:

- Note 2(f) – the measurement of pension plans and other post-retirement benefits
- Note 3 – the recoverability of accounts receivable
- Notes 12 and 13 – the estimate of accrued and contingent liabilities

###### (ii) Going concern

##### *Legal proceedings by MIF against the Corporation*

Mexico Infrastructure Finance LLC ("MIF") obtained a summary judgment in the amount of US\$18 million against the Corporation on May 27, 2015, (see Note 13) under a guarantee given by the Corporation for a loan to Par-la-Ville Hotel and Residences, Ltd ("PHRL"). MIF sought enforcement of the \$18 million judgment debt against the Corporation and PHRL that may lead to uncertainty about the Corporation's ability to continue as a going concern, if forced to repay this debt out of current income. The judgement was set aside by the Supreme Court in May 2015, the Court of Appeal in May 2017 and the Privy Council in January 2019 on the basis that the Corporation acted ultra vires (see Note 13).

MIF started additional legal proceedings against the Corporation in the Supreme Court of the State of New York on this matter (see Note 12b). The outcome of these legal proceedings is not yet known. Whilst the amounts that the Corporation may need to disburse as a result of these proceedings may be significant, as at December 31, 2022, management of the Corporation does not consider this condition to represent a material uncertainty in relation to going concern.

##### *Municipalities Amendment Act*

As explained in Note 14, in March 2018 the Government of Bermuda passed the Municipalities Amendment Act which announced changes to the Act, and on March 13, 2019 the Municipal Reform Act 2019 (the "Reform Act") was passed in the Bermuda House of Assembly but was defeated in the Senate on March 22, 2019. In July 2020, the Government of Bermuda announced that it intends to continue with the proposed implementation of the Reform Act or similar new legislation.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

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#### 2. Significant accounting policies (continued)

##### (a) Basis of preparation (continued)

##### (ii) Going concern (continued)

##### *Municipalities Amendment Act (continued)*

In March 2019 the Corporation filed a court case with the Bermuda Supreme Court on the basis that prior amendment acts, and the proposed Reform Act infringe upon the constitutional rights of the Corporation. The Supreme Court rejected that claim in a judgement handed down on March 31, 2021.

An appeal filed by the Corporation in May 2021 was dismissed in March 2022 by the Court of Appeal. In March 2022 the Corporation filed a notice of appeal with the Privy Council in London which is currently pending. Whilst the legislation may impact the legal form of the entity, the activities of the Corporation are unlikely to be altered. On that basis, management of the Corporation does not consider the matters relating to the potential amendments to the legislation to result in a material uncertainty related to going concern.

Based on its latest financial results, forecasts and projections, these financial statements have been prepared on a going concern basis which assumes that the Corporation will continue to operate for the foreseeable future. This is dependent on the following assumptions:

- there being no further reforms to the Act impacting on the Corporation's ability to continue to operate; and
- the future outcome of any legal proceedings by MIF against the Corporation.

The following are the significant accounting policies adopted by the Corporation:

##### (b) Revenues

Revenues are recorded on the accruals basis and recognized when earned. Amounts that have been received in advance of services being rendered are recorded as deferred revenue until the Corporation discharges the obligations that led to the collection of funds.

##### (c) Budget information

Budget information approved by the Corporation and the Minister responsible for the Municipalities in December 2020 is presented using a basis consistent with that used for the actual results.

##### (d) Expenditures

Expenditures are recorded on the accruals basis in the period in which the goods or services are acquired, or a liability is incurred.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

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## 2. Significant accounting policies (continued)

### (e) Non-financial assets

Non-financial assets are not available to discharge existing liabilities and are held for use in the provision of services. They have useful lives existing beyond the current year and are not intended for sale in the ordinary course of operations.

### (i) Tangible capital assets

Tangible capital assets are recorded at cost which includes amounts that are directly attributable to the acquisition, construction, development, or betterment of the asset. The costs, less residual values, of the tangible capital assets, excluding land, are amortized on a straight-line basis over their estimated useful lives as follows:

<u>Assets</u>	<u>Useful life – Years</u>
Betterments	50
Buildings	40 – 100
Fixed plant and equipment	3 – 50
Mobile plant and equipment	8 – 15
Roads	100
Sewer lines	40 – 100
Wharfs	75

Annual amortization is charged in the year of acquisition and in the year of disposal. Land is not amortized. Assets under construction are not amortized until the asset is available for productive use.

Subsequent expenditures incurred after the assets have been put into operation, such as repairs and maintenance and overhaul costs, are charged to the statement of operations in the period the costs are incurred. However, expenditures that result in an increase in the future economic benefit in excess of the originally assessed standard of performance of the existing asset are capitalized as an additional cost of tangible capital assets. When assets are sold or retired, their cost, accumulated amortization and accumulated impairment losses are eliminated from the financial statements and any resulting gain or loss is included in the statement of operations of such period.

### *Contributions of tangible capital assets*

Tangible capital assets received as contributions are recorded at their fair values at the date of receipt and are also recorded as revenue.

### *Works of art and cultural and heritage assets*

Works of art and cultural and heritage assets are not recorded as tangible capital assets in these financial statements.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

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## 2. Significant accounting policies (continued)

### (e) Non-financial assets (continued)

#### (i) Tangible capital assets (continued)

##### *Methods used for determining the cost of each major category of tangible capital assets*

The financial information recorded includes the actual or estimated historical cost of the tangible capital assets. When historical cost records were not available, other methods were used to estimate the costs and accumulated amortization of the assets. The Corporation applied a consistent method of estimating the replacement or reproduction cost of the tangible capital assets for which it did not have historical cost records, except in circumstances where it could be demonstrated that a different method would provide a more accurate estimate of the cost of a particular type of tangible capital asset. After defining replacement or reproduction cost, the Canada Non-residential Building Construction Price Index formulated by Statistics Canada was used as a resource for determining appropriate indices in order to deflate the replacement or reproduction cost to an estimated historical cost at the year of acquisition.

#### (ii) Inventories

Inventories are comprised of supplies and materials to be used to maintain properties and other assets of the Corporation and are valued at the lower of average cost and net realizable value.

#### (iii) Impairment of non-financial assets

At each statement of financial position date, tangible capital assets, net, and other long-lived assets are reviewed for impairment whenever events or circumstances indicate that a tangible capital asset no longer contributes to the Corporation's ability to provide goods and services, or that the value of future economic benefits associated with the tangible capital asset is expected to be less than its net book value on a permanent basis. The excess is recognized as impairment loss in the statement of operations and the assets are written down to their residual value, or a revised estimate of the value of the asset's remaining service potential.

### (f) Pension plans and other post retirement benefits

The Corporation sponsors a defined contribution pension plan covering all eligible employees. The cost of this plan is expensed as earned by the employees. The Corporation makes monthly contributions in accordance with the plan agreements to the employees' individual accounts, which are administered by an insurance company pursuant to and in accordance with the National Pension Scheme (Occupational Pensions) Act 1998 and applicable amendments thereto and regulations.

The Corporation sponsors a defined benefit plan for post-retirement medical healthcare benefits of its eligible former employees. The Corporation closed this plan for new members with effect from August 2008. The Corporation pays 50% of the total premiums due to the insurer with the remainder being assumed by the insured. The cost of accrued retirement benefit obligations is actuarially determined and represents the Corporation's share of the present value of future premiums for former employees over their expected lives. Actuarial gains and losses on the accrued retirement benefit obligation arise from differences between actual and expected experience and from changes to actuarial assumptions used to determine the accrued benefit obligation. Actuarial gains and losses on the accrued benefit obligation are recognized over the average remaining life of the former employees.

The expenses related to these plans are included in wages, salaries and benefits (Notes 6, 8 and 11).

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

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#### 2. Significant accounting policies (continued)

##### (g) Cash and cash equivalents and short-term deposits

Cash includes cash on hand and in banks. Cash equivalents are short-term, highly liquid investments that are readily convertible to known amounts of cash with original maturities of three months or less from dates of acquisition and that are subject to an insignificant risk of changes in value. Short-term deposits are represented by deposits with an original maturity of greater than three months, which mature within twelve months after the financial year end date.

##### (h) Receivables

Receivables are recognized and carried at their original values or invoice amounts as reduced by appropriate allowances for doubtful accounts.

Bad debts, if any, are written off during the year.

##### (i) Allowance for doubtful accounts

The Corporation provides an allowance for doubtful accounts when there is evidence that the Corporation will not be able to collect all amounts due according to the original terms of receivables. The amount of provision is equal to the estimated collection losses based on past collection experience and management's review of the current status of the long-outstanding receivables.

##### (j) Payables and provisions

Payables are stated at their original values.

The Corporation recognizes a provision if a present obligation has arisen as a result of a past event, payment is probable, and the amount can be measured reliably. The amount recognized is the best estimate of the expenditure required to settle the present obligation at the statement of financial position date, that is, the amount the Corporation would rationally pay to settle the obligation to a third party.

##### (k) Leases

###### *The Corporation as lessor*

Costs, including amortization, incurred in earning lease income are recognized as an expense. Lease income (excluding receipts for services provided such as insurance and maintenance) is recognized on a straight-line basis over the lease term. Lease income is recorded in rents from properties in the statement of operations.

##### (l) Related parties

Parties are considered related if one party has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions. Corporation members, officers, associates or companies and other related interests that directly or indirectly control or are controlled by or under common control are considered related parties. The changes to the Municipalities Act in March 2018 created a related party relationship between the Corporation and the Government of Bermuda (see Note 14). The implementation of the Municipal Reform Act 2019 has been delayed (Note 2). Therefore, the future impact on the relationship with the Government of Bermuda is not currently known.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

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## 2. Significant accounting policies (continued)

### (m) Segment disclosures

A segment is defined as a distinguishable activity or group of activities of a government for which it is appropriate to separately report financial information to achieve the objectives of the standard. The Corporation has adopted PSAB Section PS 2700 *Segment disclosures* and has provided definitions of segments used by the Corporation as well as presented financial information in segmented format in Note 11.

### (n) Future accounting standards

#### *Financial instruments*

PSAB issued Section PS 3450 *Financial Instruments* in March 2011. This section proposes reporting on the nature and extent of risks associated with financial instruments held and issued by an entity. Financial instruments which are quoted in an active market will need to apply fair value measurement (e.g., equity investments or derivatives). All other non-derivative financial instruments will be measured at cost or amortized cost unless the entity elects to apply the fair value option. To support meaningful budget to actual comparisons, when fair value measurement is applied, the presentation of surplus/deficit will need to be reported both excluding and including any re-measurement gains or losses. Early adoption is permitted. This standard is effective for the Corporation's December 31, 2023 financial statements and management does not anticipate a significant impact as a result of adoption.

#### *Financial statement presentation*

In conjunction with Section PS 3450, PSAB also issued, Section PS 1201 which replaces the existing Section PS 1200, *Financial Statement Presentation*, and includes a new statement of re-measurement gains and losses. The new statement will report unrealized gains and losses associated with financial instruments in the fair value category, exchange gains and losses associated with monetary assets and liabilities denominated in a foreign currency, amounts reclassified to the statement of operations upon derecognition, and other comprehensive income reported when a public sector entity includes the results of its government business enterprises and partnerships in the financial statements. Early adoption is permitted. This standard is effective for the Corporation's December 31, 2023 financial statements and management does not anticipate a significant impact as a result of adoption.

#### *Asset retirement obligations*

PSAB issued section PS 3280 *Asset Retirement Obligations* which replaces the existing Section PS 3270 *Solid Waste Landfill Closure and Post-Closure Liability*. The section provides guidance for recognition and measurement of asset retirement obligations, including obligations that may not have previously been reported. The section requires entities to review existing agreements to identify retirement activities associated with their controlled tangible capital assets, and those that are no longer in productive use that should be reported. Early adoption is permitted. The standard is effective for the Corporation's December 31, 2023 financial statements and management does not anticipate a significant impact as a result of adoption although a comprehensive assessment has not been undertaken yet.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

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## 2. Significant accounting policies (continued)

### (n) Future accounting standards (continued)

#### *Revenue*

PSAB issued section PS 3400 *Revenue* in November 2018. This section provides guidance on accounting for and reporting revenue transactions. It provides a detailed definition of revenue and how it should be measured and at what point in time it should be recognized. The section specifically differentiates between revenue arising from transactions that include performance obligations and transactions that do not have performance obligations. Revenue from transactions with performance obligations should be recognized when (or as) the public sector entity satisfies a performance obligation by providing the promised goods or services to a payer. Revenue from transactions with no performance obligations should be recognized when a public sector entity has the authority to claim or retain an inflow of economic resources and identifies a past transaction or event that gives rise to an asset. Early adoption is permitted. The standard is effective for the Corporation's December 31, 2024 financial statements and management does not anticipate a significant impact as a result of adoption.

#### *Public Private Partnerships*

PSAB issued section PS 3160 *Public Private Partnerships* in April 2021. Accounting for public private partnerships was identified as a priority in PSABs 2014 Project Priority Survey as such arrangements were becoming more common. The main features of the new section are:

- Public private partnership infrastructure is procured by a public sector entity using a private sector partner that is obligated to design, build, acquire or better infrastructure; finance the infrastructure past the point where the infrastructure is ready for use; and operate and/or maintain the infrastructure.
- Public private partnership infrastructure is recognized as an asset when the public sector entity acquires control of the infrastructure. A liability is recognized when the public sector entity recognizes an asset.
- An infrastructure asset acquired in a private partnership arrangement is recorded at the public sector entity's cost. The liability is initially measured at the cost of the infrastructure asset.
- Subsequent measurement of the infrastructure asset is based on the asset cost amortized in a rational and systematic manner over the useful life of the asset.
- Subsequent measurement of a financial liability should be at amortized cost using the effective interest method. For a performance obligation, revenue should be recognized and the liability reduced in accordance with the substance of the public private partnership agreement.

This becomes applicable beginning on or after April 1, 2023. Early adoption is permitted. The standard is effective for the Corporation's December 31, 2024 financial statements and management does not anticipate a significant impact as a result of adoption.

#### *Purchased Intangibles*

PSAB issued section PSG-8 *Purchased Intangibles* in November 2020. The new standard explains the scope of the intangibles now allowed to be recognized in financial statements given the removal of the recognition prohibition relating to purchased intangibles in Section PS 1000. It explains what a purchased intangible is and provides guidance on the recognition of, accounting for, and classification of purchased intangible assets that are within the scope of PSG-8. This becomes applicable beginning on or after April 1, 2023. Early adoption is permitted. The standard is effective for the Corporation's December 31, 2024 financial statements and management does not anticipate a significant impact as a result of adoption.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

#### 3. Accounts receivable

Accounts receivable of \$1,835,826 (2021 - \$1,294,019) are shown net of an allowance for doubtful accounts of \$1,339,000 (2021 - \$1,270,000). Included within accounts receivable is an amount due from the Government of Bermuda of \$703,052 (2021 - \$534,539) relating to goods wharfage revenue.

The Government of Bermuda collects goods wharfage on imported goods unloaded at the Hamilton docks and remits this to the Corporation monthly. The Corporation records this as goods wharfage revenue which amounted to \$7,742,599 for the year ended December 31, 2022 (2021 - \$7,147,099).

#### 4. Due to the Government of Bermuda and accounts payable and accrued liabilities

##### *Due to the Government of Bermuda*

The Hamilton Fire Service was originally set up by the Corporation and then transferred to the Government of Bermuda. At that time, the Corporation agreed to assist with paying a share of the fire service costs. The last payment was made in 2008 as a formal agreement had never been signed for this arrangement and the peppercorn lease as described below had expired. However, based on confirmations received from the Government of Bermuda, the Corporation continued to accrue for potential expenses payable until October 2017.

The original lease for the property which was for a period of 25 years and an annual peppercorn rent of only \$1 ended in 2008 and a new lease agreement has never been finalized. However, as no amounts were received from the Government in relation to rent due subsequent to 2008, no amount was recorded that related to this revenue or contingent asset in the Corporation's financial statements.

In October 2017, the Government of Bermuda agreed to write off an amount receivable of \$6,270,950 from the Corporation and the Corporation also agreed to write off rental income of \$4,550,000 due from the Government with the expectation that the outstanding tipping fees due to the Government of Bermuda will also be waived. The derecognition of the fire service accrual of \$6,270,950 was included in the statement of operations for the year ended December 31, 2017.

As no waiver has yet been agreed, tipping fees of \$5,576,977 (2021 - \$5,094,421) due to the Government of Bermuda have continued to be accrued as at December 31, 2022 and are included in vendor accounts payable.

Payroll tax due to the Government of Bermuda amounted to \$217,920 as at December 31, 2022 (2021 - \$187,362). The payroll tax expense for the Corporation in the year ended December 2022 was \$838,186 (2021 - \$722,314).

##### *Accounts payable and accrued liabilities*

Accounts payable and accrued liabilities is comprised of:

	<u>2022</u>	<u>2021</u>
Vendor accounts payable	\$ 6,788,392	\$ 6,764,467
Accrued liabilities	806,265	713,142
Employee benefits payable	281,593	220,372
Unearned revenue	93,938	120,775
Other payables	<u>40,416</u>	<u>29,438</u>
	<u>\$ 8,010,604</u>	<u>\$ 7,848,194</u>



**CORPORATION OF HAMILTON**

Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

**5. Tangible capital assets, net**

	<u>2021</u>	<u>Additions</u>	<u>Disposals</u>	<u>Transfers</u>	<u>2022</u>
<b>Cost</b>					
Land	\$ 12,052,112	\$ -	\$ -	\$ -	\$ 12,052,112
Betterments	3,055,151	-	-	127,169	3,182,320
Buildings	43,430,509	-	-	590,084	44,020,593
Fixed plant and equipment	17,554,233	7,230	-	2,179,447	19,740,910
Mobile plant and equipment	5,064,469	-	-	269,248	5,333,717
Roads	869,191	-	-	-	869,191
Sewer lines	4,900,684	-	-	62,336	4,963,020
Wharf	22,725,513	-	-	33,910	22,759,423
Assets under construction	<u>4,219,340</u>	<u>3,697,055</u>	<u>-</u>	<u>(3,262,194)</u>	<u>4,654,201</u>
<b>Total</b>	<b>\$ 113,871,202</b>	<b>\$ 3,704,285</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 117,575,487</b>

	<u>2021</u>	<u>Amortization expense</u>	<u>2022</u>
<b>Accumulated amortization</b>			
Betterments	\$ 611,628	\$ 78,985	\$ 690,613
Buildings	14,492,687	753,013	15,245,700
Fixed plant and equipment	8,824,188	880,725	9,704,913
Mobile plant and equipment	3,446,318	242,589	3,688,907
Roads	453,060	7,834	460,894
Sewer lines	2,180,589	126,581	2,307,170
Wharf	<u>12,913,648</u>	<u>352,907</u>	<u>13,266,555</u>
	<b>\$ 42,922,118</b>	<b>\$ 2,442,634</b>	<b>\$ 45,364,752</b>

	<u>2021</u>	<u>2022</u>
<b>Net book value</b>		
Land	\$ 12,052,112	\$ 12,052,112
Betterments	2,443,523	2,491,707
Buildings	28,937,822	28,774,893
Fixed plant and equipment	8,730,045	10,035,997
Mobile plant and equipment	1,618,151	1,644,810
Roads	416,131	408,297
Sewer lines	2,720,095	2,655,850
Wharf	9,811,865	9,492,868
Assets under construction	<u>4,219,340</u>	<u>4,654,201</u>
	<b>\$ 70,949,084</b>	<b>\$ 72,210,735</b>

**CORPORATION OF HAMILTON**

## Notes to the Financial Statements

December 31, 2022

*(Expressed in Bermuda Dollars)***6. Pension plans and other post-retirement benefits**

As described in Note 2(e), the Corporation sponsors a defined contribution pension plan covering all eligible employees. Contributions to this plan by employees are at the rate of 5% of remuneration, which is matched by the Corporation for the defined contribution plan.

Pension contributions for the year are as follows:

	<u>2022</u>	<u>2021</u>
Corporation's contributions	\$ 410,584	\$ 388,901
Employee contributions	\$ 457,395	\$ 430,692

The Corporation also sponsors a defined benefit plan for post-retirement medical healthcare benefits to eligible former employees. This plan was valued by qualified actuaries as at December 31, 2022. Information about this plan is as follows:

	<u>2022</u>	<u>2021</u>
<b>Accrued benefit obligation</b>		
Balance, beginning of year	\$ 732,785	\$ 712,268
Interest cost	43,695	42,669
Benefits paid	(121,097)	(111,636)
Actuarial loss	<u>37,573</u>	<u>89,484</u>
Balance, end of year	\$ 692,956	\$ 732,785

**CORPORATION OF HAMILTON**

Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

**6. Pension plans and other post-retirement benefits (continued)**

	<u>2022</u>	<u>2021</u>
<b>Plan assets</b>		
Fair value, beginning of year	\$ -	\$ -
Employer contributions	121,097	111,636
Benefits paid	<u>(121,097)</u>	<u>(111,636)</u>
Fair value, end of year	\$ -	\$ -
<b>Funded status</b>		
Accrued benefit obligation	\$ 692,956	\$ 732,785
Unamortized actuarial gain	<u>14,761</u>	<u>61,800</u>
Retirement benefit liability	\$ 707,717	\$ 794,585

The significant assumptions used are as follows:

	<u>2022</u>	<u>2021</u>
<b>Accrued benefit obligation:</b>		
Discount rate	6.5%	6.5%
<b>Benefits cost for the year:</b>		
Discount rate	6.5%	6.5%
<b>Healthcare cost trend rates:</b>		
Rates in years 2021 to 2022	5.0%	5.0%
Ultimate rate in 2023 and beyond	5.0%	5.0%

Increasing or decreasing the assumed healthcare cost trend rates by one percentage point would have the following effects for 2022:

	<u>Increase</u>	<u>Decrease</u>
Total of service cost and interest cost	\$ 2,210	\$ (2,054)
Accrued benefit obligation	<u>\$ 30,373</u>	<u>\$ (28,316)</u>

**CORPORATION OF HAMILTON**

## Notes to the Financial Statements

December 31, 2022

*(Expressed in Bermuda Dollars)***6. Pension plans and other post-retirement benefits** (continued)

The elements of the Corporation's retirement healthcare benefit costs recognized during the year are as follows:

	<u>2022</u>	<u>2021</u>
Interest cost	\$ 43,695	\$ 42,669
Actuarial loss	<u>37,573</u>	<u>89,484</u>
Element of retirement benefit costs before adjustments	81,268	132,153
Adjustments to recognize the long-term nature of retirement benefit costs:		
Difference between recognized and actual actuarial loss/gain	<u>(47,038)</u>	<u>(114,872)</u>
Employee future benefit cost recognized	<u>\$ 34,230</u>	<u>\$ 17,281</u>

**7. Reserves**

The Corporation may appropriate reserves for specific purposes. Reserves consist of the following funds included within accumulated surplus:

	<u>2022</u>	<u>2021</u>
CB Tucker fund	\$ 32,500	\$ 32,500
	<u>                    </u>	<u>                    </u>

**8. Expenditures by object**

	<u>2022</u>	<u>2021</u>
Wages, salaries and benefits	\$ 12,091,663	\$ 11,190,044
Contract services	8,335,702	7,387,982
Amortization of tangible capital assets (Note 5)	2,442,634	2,386,059
Supplies and materials	1,718,588	1,469,707
Interest and finance	<u>194,443</u>	<u>172,991</u>
	<u>\$ 24,783,030</u>	<u>\$ 22,606,783</u>

**9. Capital commitments**

The Corporation has contractual commitments for capital expenditures as at December 31, 2022, in the amount of \$471,169 (2021 - \$79,270), which will be paid for in 2023.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

#### 10. Financial instruments

The estimated fair values of the Corporation's cash and cash equivalents, accounts receivable, recoverable costs and accounts payable approximate their respective carrying values due to their short-term nature. The Corporation is not exposed to significant currency risk from its financial instruments as these are denominated in either Bermuda dollars or United States dollars.

##### (a) Market risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate as a result of market factors. Market factors include three types of risk: interest rate risk, currency risk and other price risk.

##### (i) Interest rate risk

Interest rate risk is the risk of an increase in interest expense or reduction in interest income as a consequence of adverse movements in interest rates. The Corporation is exposed to interest rate fluctuations with respect to the retirement benefit liability which bears interest at floating rates as disclosed in Note 6. Management does not believe that the impact of interest rate fluctuations will be significant.

##### (ii) Currency and other price risk

The Corporation believes it is not subject to significant foreign currency or other price risks arising from its financial instruments.

##### (b) Credit risk

Credit risk relates to the potential that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation. The Corporation is exposed to credit risk on its accounts receivable, cash and cash equivalents and deposits. The Corporation's cash and cash equivalents and deposits are held with three financial institutions based in Bermuda. The Corporation has accounts receivable from a wide range of individuals, businesses, and government organizations. Management actively monitors outstanding accounts receivable and believes its allowance for doubtful accounts is sufficient to mitigate its credit risk. The Corporation's maximum exposure to credit risk is represented by the carrying amount of its financial assets in the statement of financial position.

##### (c) Liquidity risk

Liquidity risk is the risk that the Corporation will encounter difficulties meeting its financial obligations as they become due. The Corporation manages its liquidity risk by forecasting cash flows from operations and anticipating investing and financing activities to ensure it has sufficient available funds to meet current and foreseeable financial requirements. The table below summarizes the Corporation's contractual undiscounted cash flows. Balances due within twelve months are met within the Corporation's normal thirty-day cycle of disbursements.

	<u>Total</u>	<u>0-3 months</u>	<u>4-12 months</u>	<u>Greater than 1 year</u>
<b>December 31, 2022</b>				
Accounts payable	\$ 7,306,564	\$ 7,306,564	\$ –	\$ –
<b>December 31, 2021</b>				
Accounts payable	\$ 7,155,215	\$ 7,155,215	\$ –	\$ –

The Corporation does not carry a liability in relation to the contingencies as further detailed in Note 12.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

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#### 10. Financial instruments (continued)

Management believes that these financial risks are appropriately mitigated and do not pose significant risk to the Corporation's operations. There have been no significant changes in the policies, procedures, and methods used to manage these risks in the year.

#### 11. Segmented reporting

The Corporation provides a range of services to both residents and businesses within the boundaries of the City. Certain services such as connection to the City sewer lines are available to persons/businesses outside the City boundaries on a fee basis. Most revenue lines have been allocated directly to the relevant segment. However, taxation has been split equally between Governance and Civic Services, Sanitation and Sewer, and Public Works and Planning to defray some of the costs of providing these services. From April 1, 2014, the Government of Bermuda returned the right of the Corporation to charge goods wharfage on imported goods. For segmented disclosure purposes, these services are grouped and reported under service areas/departments that are responsible for providing such services. They are as follows:

##### *Governance and Civic Services*

City Hall provides for the Mayoral and Council functions, Theatre and Arts facilitation, Corporate, Finance, Engineering and Event administration. Parks are included under this caption because of public entertainment that is provided in them.

##### *Sanitation and Sewer*

Sanitation and Sewer is responsible for the general cleanliness of the City including daily garbage collection and maintenance of the sewer system.

##### *Public Works and Planning*

Public Works and Planning provides maintenance services to ensure that roads, traffic lights, streetlights, Corporation vehicles and equipment are in good working order. In addition, any future major construction development is handled by this segment.

##### *Parking*

Parking which includes both on and off-street parking is administered through this department. Consideration is given to the availability of car parking spaces to meet the public demand for parking.

##### *Wharf*

Wharf is responsible for the security of the waterfront in the City. Good working order of the docks for both cruise ships and cargo vessels is of prime importance for efficient transfer of goods and passengers through the port.

**CORPORATION OF HAMILTON**

Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

**11. Segmented reporting** (continued)

	<u>2022</u>						<u>2021</u>
	<u>Governance and Civic Services</u>	<u>Sanitation and Sewer</u>	<u>Public Works and Planning</u>	<u>Parking</u>	<u>Wharf</u>	<u>Total</u>	<u>Total</u>
<b>Revenue</b>							
Property taxes	\$ 2,881,078	\$ 2,881,078	\$ 2,881,077	\$ -	\$ -	\$ 8,643,233	\$ 8,698,612
Goods wharfage	-	-	-	-	7,742,599	7,742,599	7,147,099
Car parking fees	-	-	-	4,319,952	-	4,319,952	3,325,184
Sewer disposal contracts	-	2,440,528	-	-	-	2,440,528	2,428,500
Rents from properties	511,425	136,898	6,125	-	16,020	670,468	568,533
Other permit and license fees	50,980	97,159	-	-	286,969	435,108	433,534
Sewage tax	-	428,146	-	-	-	428,146	429,328
Ship's wharfage	-	-	-	-	242,926	242,926	331,504
Dock charges	-	-	-	-	433,516	433,516	284,548
Miscellaneous	-	104,380	-	-	-	104,380	106,504
City Hall rents	68,956	-	-	-	-	68,956	26,680
Interest	9,568	-	-	-	-	9,568	25,187
	<u>3,522,007</u>	<u>6,088,189</u>	<u>2,887,202</u>	<u>4,251,262</u>	<u>8,722,030</u>	<u>25,539,380</u>	<u>23,805,213</u>
<b>Expenditures</b>							
Wages, salaries and benefits	4,559,473	3,052,560	3,352,954	1,040,031	86,645	12,091,663	11,190,044
Contract services	4,200,687	1,015,054	1,754,940	231,048	1,133,973	8,335,702	7,387,982
Supplies and material	651,593	209,625	675,033	121,691	60,646	1,718,588	1,469,707
Amortization of tangible capital assets	228,369	263,806	1,198,487	330,032	421,940	2,442,634	2,386,059
Interest and finance	194,443	-	-	-	-	194,443	172,991
	<u>9,834,565</u>	<u>4,541,045</u>	<u>6,981,414</u>	<u>1,722,802</u>	<u>1,703,204</u>	<u>24,783,030</u>	<u>22,606,783</u>
Excess (shortfall) of revenue over expenditures	\$ (6,312,558)	\$ 1,547,144	\$ (4,094,212)	\$ 2,597,150	\$ 7,018,826	\$ 756,350	\$ 1,198,430

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

*(Expressed in Bermuda Dollars)*

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#### 12. Contingencies

- (a) In July 2017 MIF filed proceedings against the Bank of New York Mellon (BNY Mellon) and the Corporation in the Supreme Court of the State of New York. The proceedings allege five causes of action against the Corporation, including breach of contract, breach of fiduciary duty, negligence, fraud and negligent misrepresentation. MIF is seeking damages in an amount to be determined at trial but not less than \$13,749,858 plus interest thereon to the date of entry of judgement.

In December 2017 the attorneys for BNY Mellon advised that BNY Mellon would seek indemnification from MIF and the Corporation for any losses, including attorneys fees, incurred in the litigation. Under the terms of the escrow agreement (Note 13), the right to indemnification, if it exists at all, cannot be determined until the litigation is over. On December 15, 2017, the Corporation filed a motion to dismiss the case. BNY Mellon also filed a motion to dismiss on different grounds.

On March 14, 2019 the Corporation received notice that the request of both defendants to dismiss was denied with one exception. BNY Mellon's motion to dismiss the gross negligence tort claim was granted. On April 18, 2019 the Corporation filed their answer which is a document that responds to each of MIF's allegations. On June 14, 2019, the Supreme Court held a case management conference at which time the Court ordered that discovery proceed in accordance with the established schedule. Discovery is the exchange of documents, information and deposition testimony among the parties. On September 27, 2019, the Corporation filed a motion for summary judgement and judgement on the pleadings. On December 20, 2019 MIF filed its opposition to the motion. The motion comprises two parts; In the first part the Corporation seeks to dispose of all of MIF's claims based on the ultra vires defense (Notes 2 and 14). The Corporation argues that (1) just like the guarantee, the Corporation lacked the capacity to enter into the Escrow Agreement and (2) this lack of capacity means that MIF cannot pursue any of its contract and tort claims against the City of Hamilton. In the second part the Corporation seeks to dispose of all of MIF's tort claims. The motion was submitted to the Supreme Court on February 14, 2020. By Order dated August 7, 2020, the Court dismissed all of MIF's tort claims, but declined to dismiss MIF's breach of contract claim. On September 21, 2020, the Court denied the Corporation's motion for reconsideration regarding the remaining breach of contract claim.

As a part of the pre-trial process the sitting judge asked both parties to engage in a mediation process starting in February 2021. No agreement was reached in the mediation process, therefore, a trial was held in New York on June 28, 2023. The judge will provide a ruling by July 7, 2023.

No provision has been included in the financial statements in relation to the above matters as based on legal advice the outcome cannot be determined.

The Corporation has also been notified of a potential claim by a third party which is itself subject to a claim by MIF in relation to the Par-la-Ville car park matter. Based on legal advice received the Corporation believes it has a strong defense against any potential claim by the third party and the possibility of a loss is remote. Accordingly, no provision has been included in the financial statements.



## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

*(Expressed in Bermuda Dollars)*

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#### 12. Contingencies (continued)

(b) On August 1, 2017, the attorneys for the Corporation wrote to the receivers of PHRL (Note 14) asking them to return any funds in their possession in relation to their appointment as receivers for the Par-la-Ville car park property (the "Property"). In response to the letter MIF filed a generally endorsed writ of summons in the Supreme Court of Bermuda on August 17, 2017. MIF's claim is for a declaration that the mortgage is valid and binding; a declaration that the appointment of the receivers is valid and binding; and a claim for further other relief and costs. They argue that the mortgage is an obligation discreet from the guarantee and enforceable in any event. Based on legal advice, the Corporation considers the mortgage document to be null and void since the guarantee has been held to be ultra vires (Notes 2 and 14). On August 21, 2019, MIF filed a summons application seeking to amend the writ. The case was heard on October 23, 2019 and the ruling was handed down on January 16, 2020 in favour of MIF who subsequently filed an amended writ for a declaration that the Corporation is estopped from denying the validity of the mortgage; that MIF has equitable title to the Property; and seeking damages and interest thereon or further relief. It is the Corporation's intention to move ahead in defending this matter. No hearing date has been set. No provision has been made in the financial statements as based on legal advice the outcome cannot be determined.

#### 13. Mexico Infrastructure Finance LLC ("MIF")

In 2012, the Corporation entered into a Development Agreement and Ground Lease with Par-la-Ville Hotel and Residences Ltd ("PHRL") to build a luxury hotel and condominium residence in the Par-la-Ville car park (the "Project").

Mexico Infrastructure Fund Limited ("MIF"), PHRL and the Corporation executed a credit agreement (the "Credit Agreement") on July 9, 2014 in which MIF agreed to loan PHRL \$18 million as bridge financing for the construction of the Project. The Credit Agreement was executed on the basis that the Corporation agreed to:

1. provide a mortgage over the property known as the Par-la-Ville car park (the "Property"); and
2. guarantee the loan (the "Guarantee").

On July 9, 2014, an escrow agreement was entered into between MIF, PHRL, the Corporation and BNY Mellon ("the Escrow Agent"). Under the terms and conditions of the escrow agreement, the Escrow Agent was to hold the loan proceeds until such time as PHRL had secured permanent financing comprising debt of \$225 million and equity of \$100 million or a "substantially similar financing structure from the Permanent Lender". The Corporation authorized the release of the funds from the escrow account in October 2014 based on an agreement reached between PHRL and Argyle Limited, a company which PHRL represented to the Corporation as the "Permanent Lender".

Due to the default on repayment of the loan by PHRL, on December 30, 2014 MIF initiated legal proceedings against the Corporation and PHRL. On March 31, 2015, Joint Receivers were appointed over the Property. On May 27, 2015, the Supreme Court awarded summary judgment to MIF over claims against PHRL and the Corporation. The judgment against the Corporation was for \$18 million and accrued interest from the date of judgment at the rate of 7% per annum or \$3,452 per day until the obligation is satisfied.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

(Expressed in Bermuda Dollars)

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#### 13. Mexico Infrastructure Finance LLC ("MIF") (continued)

On November 18, 2016, the Supreme Court ruled that the Corporation had no power to guarantee the loan from MIF to build a hotel on the Par-la-Ville car park. The Court resolved that in providing the guarantee, the Corporation had acted ultra vires. Therefore, the previously unchallenged Consent Order that had required the Corporation to pay MIF the loan plus interest was set aside. The judge's decision was appealed by MIF in the March 2017 session of the appellate court. On May 12, 2017 the Court of Appeal dismissed the appeal and upheld the Supreme Court ruling. As the guarantee cannot be enforced against the Corporation and the Corporation is not liable for the guaranteed sum of \$18 million the Corporation derecognised the liability related to the guarantee of \$18 million together with previously accrued interest of \$752,548 and this reversal of \$18,752,548 was included in the statement of operations for the year ended December 31, 2016. In November 2020, MIF was ordered to pay the Corporation's court costs of \$253,089. The funds were received by the Corporation in January 2021 and are included in accounts receivable on the statement of financial position as at December 31, 2020 and in miscellaneous income in the statement of operations for the year then ended.

In June 2017 MIF served notice of its application to appeal this decision to the Privy Council. The Privy Council hearing was held on October 16, 2018. In January 2019 the Privy Council also dismissed the appeal and ruled in favour of the Corporation.

In accordance with the terms of the Credit Agreement, PHRL was due to pay the Corporation \$900,000 upon the closing of financing from the Permanent Lender. In July 2015, the Corporation issued a statutory demand for payment. PHRL did not make this payment and on August 28, 2015 the Corporation petitioned the Supreme Court to wind up PHRL in accordance with Section 161 (e) of the Companies Act 1981. Joint Provisional Liquidators ("JPLs") were appointed over PHRL on October 9, 2015.

The JPLs of PHRL have been successful in their proceedings in the High Court of Justice in England against parties involved with the transfer of funds loaned to PHRL and subsequently transferred to Argyle Limited. As the creditor who appeared to have the major economic interest in the liquidation of PHRL at the time, the Corporation agreed, in August 2016, to place a deposit of \$275,000 with the courts for these proceedings to cover any potential costs should the Corporation lose the case. In November 2018, \$262,500 of the amount deposited was returned to the Corporation. The remaining \$12,500 was received in April 2021.

In May 2016, the Corporation provided funding of \$25,000 for the winding up of Argyle Limited and in August 2016 a further \$100,000 was provided to fund the liquidation of PHRL, the Skyline Trust and Argyle Limited. In the event of recoveries by the JPLs these funds will be returned to the Corporation. The successful outcome of the High Court proceedings has resulted in Orders for Sale of certain assets in the UK, which are in the process of being realized. The remaining funding of \$125,000 will be used to fund future legal expenses.

#### 14. Municipal Reform Act

On March 13, 2019, the Members of Parliament passed the Municipal Reform Act 2019 in the House of Assembly. The Bill would abolish municipal elections, provide for the selection and appointment of Members of the Corporation, and make consequential amendments to the Municipalities Act 1923 ("the principal Act"). It would also make certain directions given by the Minister to a Corporation subject to parliamentary scrutiny. The Act would turn the Corporation into a quasi-autonomous non-government organization ("QUANGO") controlled by the Government of Bermuda. The Municipal Reform Act 2019 was defeated in the Senate on March 22, 2019.

## CORPORATION OF HAMILTON

### Notes to the Financial Statements

December 31, 2022

*(Expressed in Bermuda Dollars)*

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#### **14. Municipal Reform Act** (continued)

The Corporation filed an application with the courts on March 19, 2019 seeking declaration that the Municipalities Reform Act 2010 ("the Reform Act"), The Municipal Reform Act 2019 and the other Amendment Acts, as well as the decision by the Government to convert the Corporation to a QUANGO contravene sections 1 and 13 of the Bermuda Constitution on the basis that this legislation would deprive the Corporation of compensation for its property and the protection of law over its property. The case was heard in the Supreme Court on February 24 and 25, 2021. On March 31, 2021 a judgement was handed down from the Supreme Court of Bermuda. The judge ruled against the Corporation and dismissed the claim that the legislation infringed on the fundamental rights and freedoms of the Corporation as set in the Bermuda Constitution. On May 12, 2021 the Corporation filed a notice of appeal. The appeal was dismissed on March 18, 2022. In February 2023, the Corporation filed a notice of appeal to the Privy Council in London. No hearing date has been set.

#### **15. Subsequent events**

The Corporation evaluated events and transactions occurring from January 1, 2023 through to June 30, 2023 for potential recognition or disclosure in the notes to the financial statements.

On June 28, 2023, a trial was held in New York in relation to the MIF's litigation against the Corporation. The judge is expected to provide a ruling by July 7, 2023 (Note 12(a)).

Management believes that there are no other post year-end events that need to be reflected in the financial statements or disclosed in the notes to the financial statements.