Chapter 54

RETIREMENT PLAN

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[HISTORY: Adopted by Special Town Meeting of the Town of Cromwell 3-10-1966.[1] Amendments noted where applicable.]

CHARTER REVISION

Effective with the general election held in November 2013, the Town changed to a Town Council/Town Manager form of government. According to Charter § 11.04, any references in Town ordinances to the "First Selectman" or to the "Board of Selectmen" shall now be deemed to refer to the "Town Manager" or the "Town Council," as appropriate.

ARTICLE I
Title; Effective Date

§ 54-1. Title.

This retirement plan shall be known as the "Town of Cromwell Retirement Plan."

1. Editor's Note: Action of Special Town Meeting on this plan was validated by the General Assembly of the State of Connecticut by Special Act approved 5-26-1967.

§ 54-2. Effective date. [Amended STM 12-14-1972; BOS 2-1-1977; BOS 2-8-1989; BOS 6-13-1990]

The effective date of this chapter, as amended, is June 30, 1990. The original plan was effective as of September 1, 1965, and was amended as of November 1, 1972; June 30, 1982; January 1, 1989; and June 30, 1990.

ARTICLE II
Definitions and Word Usage

§ 54-3. Terms defined.

A. As used in this chapter, the following terms shall have the meanings indicated:

ACTUARY — A member of the Society of Actuaries or an organization employing such a member, appointed and compensated by the Town to perform the duties of the "actuary" hereinafter provided.

ANNIVERSARY DATE — September 1, 1965, and September 1 of each year thereafter up to and including September 1, 1972. On and after July 1, 1973, "anniversary date" shall mean July 1 of each year. **[Amended STM 12-14-1972]**

AVERAGE FINAL COMPENSATION — The average annual compensation of a participant during his three consecutive highest-paid years of service prior to and including his last full month of employment. **[Added STM 12-14-1972; amended BOS 2-8-1989]**

BENEFICIARY — Any person who may be entitled to receive any death benefit which may be payable as provided in § 54-15 hereof.[2]

COMPENSATION — The total annual salary or wages earned by a participant from the Town for a particular year. **[Amended STM 12-14-1972]**

CONTINGENT ANNUITANT — The person, if any, whom a participant shall have designated to receive annuity payments following the death of such participant, as provided in Article V, § 54-14, hereof.

CREDITED SERVICE — The latest period of continuous employment of a participant by the Town subsequent to the date the employee agrees to contribute in accordance with § 54-23, up to and including such participant's actual retirement date, discharge or termination of employment if such occurs prior to his actual retirement date, assuming for employees who become participants on and after January 1, 1989, such employee agrees to contribute within one month after completing his probationary period. Otherwise, credited service will commence when an employee agrees to contribute. Participants in the plan on January 1, 1989, will be given an additional six months' credited service. Absences from employment of less than five months in any calendar year and periods of authorized leave of absence for an employee or participant (except as

2. **Editor's Note: The former definition of "Board of Selectmen," which immediately followed, was repealed TC 6-16-2014. See now the definition of "Town Council."**

otherwise provided in the case of Town officials in § 54-29) shall be included in computing a participant's credited service. For the purpose of computations involving credited service, fractional parts of a year shall include all completed months of employment. In addition to the above, a participant's credited service will include any service from the latest period of continuous employment (including certain federal programs) for which the participant makes the additional contributions to buy back service in accordance with § 54-23. **[Amended BOS 2-10-1982; BOS 2-8-1989; BOS 6-13-1990]**

EMPLOYEE — Any person employed by the Town, including elected or appointed officials, whose customary employment is for not less than 20 hours in any one week nor less than five months in any calendar year, provided that such term shall not include any persons who have been, are or shall be eligible for membership in the state teachers' retirement system, or municipal employees retirement system. **[Amended TC 6-16-2014]**

ENTRY DATE — The first day of the month in which an employee becomes a participant in the plan. The earliest entry date shall be that month in which an employee completes his probationary period.[3] **[Amended BOS 2-8-1989]**

LEAVE OF ABSENCE — A period of leave as provided for in Article IX hereof.

NORMAL RETIREMENT DATE — For a participant who retires on and after January 1, 1989, the first day of the month coinciding with or next succeeding his 62nd birthday or the completion of five years of participation in the plan, whichever occurs later. **[Amended BOS 2-8-1989]**

PARTICIPANT — An employee who is eligible under the terms of Article IV of this plan. It shall not include in its meaning a retired participant or a terminated participant.[4]

PLAN — The retirement plan set forth in and by this chapter and all subsequent amendments thereto.

PLAN YEAR — The year beginning on July 1 of each year, commencing July 1, 1973. **[Amended STM 12-14-1972]**

RETIRED PARTICIPANT — A person who has been a participant and who is receiving retirement benefits under Article V hereof.

RETIREMENT BOARD — The Retirement Board established to administer this plan, as provided for in Article III hereof.

RETIREMENT DATE — The first day of the month coinciding with or next succeeding the date of actual retirement of a participant from service with the Town, which date shall not be earlier than his 55th birthday.

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3. **Editor's Note: The definition of "future service compensation," which immediately followed this definition, was repealed STM 12-14-1972.**

4. **Editor's Note: The definition of "past service compensation," which immediately followed this definition, was repealed STM 12-14-1972.**

TERMINATED PARTICIPANT — A person who has been a participant but who is no longer an employee and whose status as an employee has been terminated other than by death, retirement or leave of absence.

TOWN — The Town of Cromwell.

TOWN COUNCIL — The Town Council of the Town of Cromwell. **[Added TC 6-16-2014]**

TRUSTEE — The person or entity appointed as trustee by action of the Retirement Board. **[Amended BOS 11-13-2002]**

TRUST FUND — The fund held by the trustee for the purpose of providing benefits pursuant to this plan.

TRUST or TRUST AGREEMENT — The declaration of trust or trust agreement establishing the trust fund, together with any and all amendments or supplements thereto, and also the trust created by such declaration or agreement. **[Amended BOS 11-13-2002]**

B. The singular form of any word shall include the plural and the masculine gender shall include the feminine wherever necessary for the proper interpretation of this plan.

ARTICLE III
Retirement Board

§ 54-4. Board established; membership. [Amended BOS 2-10-1982; TC 6-16-2014]

This retirement plan shall be administered by a Retirement Board of five members consisting of the following officials of the Town of Cromwell: Mayor, Town Manager, Town Finance Director/Town Treasurer; the Business Manager from the Board of Education; and the Executive Director of the Cromwell Fire District.

§ 54-5. Action by Board.

Any act which this plan authorizes or requires the Board to do may be done by a majority of the members of the Board at the time acting hereunder; and the action of such majority of the members of the Board, expressed from time to time by a vote at a meeting or in writing without a meeting, shall constitute the action of the Board and shall have the same effect for all purposes as is assented to by all of the members of the Board at the time in office.

§ 54-6. Appointment of secretary and other representatives; designation of person to act. [Amended BOS 11-13-2002]

The Board may appoint a secretary, who may or may not be a member of the Board, and such other agents or representatives as it may deem advisable, who need not be members of the Board but may or may not be participants under this plan, to keep the records of the Board and to assist it in doing any other acts or things to be done or performed by the Board. The Board may certify to the trustee and one or more investment managers, if any, by majority

vote or action, as provided for in § 54-5 of this article, the name of one member of the Board authorized to act for it in its relationship with the trustee and any such investment manager. The trustee and any such investment manager shall be and hereby are authorized to act in pursuance of the written instructions of any member of the Board so designated and shall be and hereby are completely released from any liability resulting from or in connection with any action taken pursuant to instructions so received.

§ 54-7. Interpretation and administration of plan.

The Board may make rules and regulations for the administration of the plan which are not inconsistent with its terms and provisions. The Board may construe the plan, and its constructions thereof and action thereon in good faith shall be final and conclusive. It may correct any defect or supply any omission or reconcile any inconsistency in such manner and to such extent as it shall deem expedient to carry the same into effect, and it shall be the sole and final judge of such expediency. The Board shall supervise and control the operation of the plan in accordance with the terms hereof and shall have all powers necessary to accomplish that purpose. The Board may employ such actuarial, legal, clerical, consulting and other services as it deems necessary for the proper operation of the plan, and the cost of such services shall be paid by the Town.

§ 54-8. Direction that benefits be paid.

In connection with the exercise of its powers, the Board, upon written certification by the actuary, shall direct the trustee, in writing, as to any benefits to be paid from the trust fund, and the trustee shall be fully protected in acting upon such written directions.

§ 54-9. Compensation and expenses of members.

The members of the Board shall serve without compensation for services as such, but all normal and reasonable expenses of the Board shall be paid by the Town.

§ 54-10. Annual report. [Amended TC 6-16-2014]

The Board shall submit annually to the Board of Finance a schedule of the estimated expenses necessary for the administration of this plan and its estimate of the liability of the Town to contribute to the trust fund in order to maintain the retirement plan in an actuarially sound condition. The Board shall annually report to the Town Council of the Town the financial condition of the retirement plan, setting forth such facts and recommendations as may be of value to the participants in the plan and to the Town of Cromwell.

ARTICLE IV
Employees Entitled to Participate

§ 54-11. Conditions of eligibility.

A. Every employee of the Town, on January 1, 1989, shall be eligible to become a participant hereunder on the first day of the month following the date on which he shall have completed his probationary period. **[Amended BOS 2-8-1989]**

B. Date of eligibility. **[Amended BOS 2-10-1982]**

(1) Every person who shall become an employee of the Town subsequent to September 1, 1965, and before December 31, 1979, shall be eligible to become a participant hereunder on the first day of the month following the date on which he shall have been employed continuously by the Town as an employee for 24 months and shall have reached his 25th birthday, provided that he shall not have attained his 53rd birthday.

(2) Every person who shall become an employee of the Town subsequent to June 30, 1982, and all employees who are not yet participants, shall be eligible to become a participant on the first day of the month following the date on which he shall have been continuously employed by the Town as an employee for six months, provided that such employee agrees to contribute.

(3) Every person who shall become an employee of the Town subsequent to January 1, 1989, and all employees who are not yet participants shall be eligible to become a participant on the first day following the completion of his probationary period, provided that such employee agrees to contribute. **[Added BOS 2-8-1989]**

C. The Board shall notify each eligible employee of the Town of his eligibility. Any such eligible employee desiring to become a participant hereunder shall file with the Board his election to become a participant hereunder on a form as provided in Subsection D hereof prior to the date on which he first becomes eligible to become a participant; provided, however, that in special cases the Board may extend the time within which such election must be filed. Failure to file such election within the prescribed time shall constitute a waiver by such employee of all benefits he would otherwise have received by becoming a participant hereunder on the date on which he first became eligible. Any employee who does not elect to become a participant hereunder on the date when he first becomes entitled to participate hereunder may elect to become a participant on any subsequent anniversary date, provided that he shall then meet all of the requirements of Subsection B, but such participant shall not be entitled to any credited service for employment with the Town prior to participation in the plan. Anything contained in this subsection to the contrary notwithstanding, with respect to the first anniversary date of the plan, eligible employees may be notified of their eligibility and file election forms after the September 1, 1965, anniversary date under such rules as the Board shall establish.

D. The election form shall contain such information as the Board shall require and shall authorize the deduction of any such participant's contributions which may be required hereunder from such participant's pay in such manner as the Board shall require.

§ 54-12. Interruptions in employment.

If a participant's status as an employee of the Town is terminated or interrupted for more than five months in any twelve-month period, except in the case of a leave of absence, and thereafter he resumes his status as an employee, he shall be deemed to be a new employee from the date of such reemployment or resumption, and his period of employment shall be counted from such date.

ARTICLE V
Benefits

§ 54-13. Benefit formula. [Amended STM 12-14-1972; BOS 2-1-1977; BOS 2-10-1982]

Each participant at retirement on his normal, early or deferred retirement date on or after June 30, 1982, shall be entitled to an annual retirement benefit commencing on his normal, early or deferred retirement date, payable in monthly installments for life thereafter, equal to 1.5% of his average final compensation multiplied by his years of credited service.

§ 54-14. Contingent annuitant option.

Instead of the normal monthly retirement benefit provided under § 54-13, a participant may elect a contingent annuitant option providing for actuarially reduced monthly retirement benefits payable to him during his lifetime after retirement and for the continuance of such payments or a part of them specified by the participant to a contingent annuitant for his life after the death of the retired participant. Such election may be made by a participant at any time at least one year prior to his retirement date or within one year prior to his retirement date upon furnishing evidence of the participant's good health satisfactory to the Board. A participant who has elected this option may not at any time within one year prior to his retirement date revoke or modify such option, except upon furnishing evidence of good health of the contingent annuitant satisfactory to the Board; provided, however, that the death of the contingent annuitant at any time prior to the participant's retirement date shall automatically revoke such election, and further provided that if the contingent annuitant is the spouse of the participant, a divorce granted to either spouse at any time prior to the participant's retirement date shall automatically revoke such election. If a participant who has elected this option dies before his retirement date, no benefits under this option shall be payable to the contingent annuitant. If the participant dies after his retirement date, the contingent annuitant shall receive for life, commencing on the first day of the calendar month coinciding with or next following the retired participant's death, the benefits specified by the retired participant for the contingent annuitant. If the contingent annuitant dies before the participant's retirement date, the monthly retirement benefit normally provided under this plan will be payable to the retired participant as if this option had not been elected. If the contingent annuitant dies after the participant's retirement date, the amount of the payments which the retired participant is then receiving or is entitled to receive will continue unchanged and will cease upon the retired participant's death.

§ 54-15. Ten-year certain option.

Each participant shall have the option, to be exercised by a written direction to the Board, to elect to have actuarially reduced monthly retirement benefits payable for 10 years certain and for his life thereafter. Such election may be made by a participant at any time at least one year prior to his retirement date or within one year prior to his retirement date upon furnishing evidence of good health satisfactory to the Board. Upon the death of a retired participant after his retirement date but before 120 monthly payments have been made to him, if he shall have effectively elected such a ten-year option, then the balance of such 120 monthly payments shall be made to such beneficiary as he shall have most recently designated in a written instrument signed by him in the presence of one subscribing witness and filed with the Board, either before or after his retirement. If no such designation is on file with the Board at the time of death or is defective for any reason or if such beneficiary shall predecease the retired participant, then the estate of such retired participant shall receive the commuted value of such benefit payable in a lump sum. If the beneficiary, having survived the retired participant, dies before all of said 120 payments have been made, then the commuted value of the balance of said payments shall be paid in a lump sum to the beneficiary's estate. If the participant dies before his retirement date, no benefits shall be payable under this option.

§ 54-16. Early retirement option.

Each participant who shall have reached his 55th birthday and shall have at least 15 years of credited service shall have the option, to be exercised by a written notice to the Board and with the consent of the Board, to retire at any time thereafter prior to his normal retirement date. The amount of retirement benefits payable to such retired participant shall be computed as provided in § 54-13 hereof, except that the date of such early retirement shall be used in determining his credited service, and the amount thus obtained will be reduced, such reduction to be determined by the actuary in accordance with accepted actuarial practices, if such retirement benefit is to commence prior to such participant's normal retirement date. The contingent annuitant and the ten-year certain options, provided for in §§ 55-14 and 54-15 hereof, may be elected by a participant who elects to retire early under this section, in which case the term "retirement date" shall be deemed to mean early retirement date wherever applicable in §§ 54-14 and 54-15.

§ 54-17. Social security option.

If the commencement of retirement benefits under the Federal Social Security Act does not coincide with the early retirement date selected by a participant under § 54-16, a participant retiring in accordance with the provisions of § 54-16, before social security payments begin, shall have the further option, to be exercised by a written request to the Board and with the consent of the Board, to receive an actuarially equivalent retirement income providing larger monthly payments in lieu of the retirement income otherwise payable under § 54-16 upon early retirement, until the date upon which his retirement benefits under the Federal Social Security Act shall commence, at which time his monthly payments hereunder shall be reduced by the approximate amount of the social security retirement benefit, which the participant will receive, so that, insofar as practical, a level total retirement income will be available for the participant. Election of such social security option by a participant shall automatically revoke

any contingent annuitant option or ten-year certain option which may have been elected by such participant.

§ 54-18. Deferred retirement. [Amended BOS 2-8-1989]

Any participant may continue in the employ of the Town beyond his normal retirement date and receive credited service while he continues as an employee. The Town shall continue to make contributions on behalf of any participant who defers his retirement under the provisions of this section, and such participant shall continue his contributions as provided in § 54-23 of Article VIII. Such participant's retirement benefits will commence on his retirement date, and his retirement benefit shall be computed as provided in § 54-13 hereof, except that his deferred date of retirement shall be used in determining his credited service.

§ 54-19. Benefits limited to assets of trust fund.

The benefits provided for herein shall be only such as can be provided by the assets of the trust fund. In the event of the termination of this plan, as provided for in Article X or otherwise, there shall be no liability or obligation on the part of the Town to make any further contributions to the trustee for the purposes of this plan or otherwise.

ARTICLE VI
Benefits Upon Death of Participant

§ 54-20. No direct death benefit payable.

Except as provided for in § 54-21 hereof regarding return of contributions and in the contingent annuitant and ten-year certain options in Article V hereof, no death benefits shall be payable hereunder upon the death of a participant or retired participant.

§ 54-21. Return of contributions. [Amended BOS 2-1-1977]

Upon the death of a participant prior to his retirement and the commencement of retirement benefits or upon the death of a terminated participant who shall have left his contributions in the trust fund as provided in § 54-22 hereof, there shall be paid from the trust fund to his beneficiary designated, as provided in § 54-15 hereof, an amount equal to his contributions to the trust fund, plus interest thereon computed at the annual rate of 3% prior to July 1, 1976, and at the annual rate of 5% thereafter, compounded annually to the date of his death. Upon the death of a retired participant who has not elected the contingent annuitant or ten-year certain options before there shall have been paid to the retired participant the amount of his contributions to the trust fund, plus interest thereon computed at the annual rate of 3% prior to July 1, 1976, and at the annual rate of 5% thereafter, compounded annually to his actual retirement date, then the amount of such contributions, plus such compound interest, less the amount of pension benefits paid to such retired participant prior to his death, shall be paid to the retired participant's beneficiary designated, as provided in § 54-15 hereof.

ARTICLE VII
Termination of Employment

§ 54-22. Payments required. [Amended BOS 2-1-1977]

A. If any participant shall cease to be an employee of the Town, except upon death or as a retired participant or except as provided in Article IX hereof for leave of absence, then he shall be entitled to a return of all of his own contributions to the trust fund, plus interest thereon computed at the annual rate of 3% prior to July 1, 1976, and at the annual rate of 5% thereafter, compounded annually to date of termination; provided, however, that any participant who shall elect to leave his contributions in the trust fund shall be entitled at his normal retirement date, if he shall then be living and if such contributions are left in the trust fund, to the following percentage of the amount of retirement benefit as computed under the provisions of § 54-13 hereof, such percentage to depend upon the number of his full years of credited service under the plan following his entry date, except that the date of such termination shall be used in determining his credited service:

Years of Credited Service Under the Plan	Percent of Accrued Benefit Vested
Fewer than 10	0%
10 or more	100%

B. Anything contained herein to the contrary notwithstanding, in no event shall the vested benefit to which the terminated participant is entitled be of lesser value than the amount of his own contributions, including interest as hereinabove provided, at the date of his termination of employment as determined by the actuary in accordance with accepted actuarial practice, and in no event shall the vested percentage indicated above be less than the percentage that would have been applicable if the participant had terminated employment on June 30, 1976. Any such terminated participant may elect, by written notice filed with the Board at least 60 days prior to an anniversary date, to withdraw, as of the next succeeding anniversary date, his own contributions to the trust fund, plus interest thereon, to such anniversary date computed as hereinabove provided. If any such terminated participant shall so elect to withdraw his own contributions, then he shall have no further rights whatsoever in and to any benefits under this plan.

ARTICLE VIII
Contributions

§ 54-23. Contributions by participants. [Amended BOS 2-10-1982; BOS 2-8-1989; BOS 6-13-1990]

A. Regular contributions. Effective January 1, 1989, each participant shall contribute during each year of his credited service following his entry date, except as provided in § 54-18 of Article V, an amount equal to 2 1/2% of his compensation, as defined in Article II hereof. The Town shall deduct such participant's contribution hereunder from such participant's pay, and the combined contributions of the participants shall be made

directly by the Town to the trustee. In addition, participants on June 30, 1982, but hired prior to June 30, 1982, may purchase the number of years of credited service which such participant would have been eligible to receive had the definition of credited service and the conditions of eligibility read as adopted February 10, 1982. Such purchase must be made in equal monthly installments within a period equal to that being purchased following the date of notification by the Town of the amount required for the purchase. Such amount shall be 2% of the compensation which such participant received during the year or years to be purchased plus an interest charge of 5% compounded from the year being purchased to the purchase date. This purchase option shall not apply to any person who has previously elected not to participate in such plan.

B. Buy-back contributions.

(1) Participants who are actively employed by the Town on June 30, 1990, are eligible to make additional contributions for purposes of receiving credited service for service, prior to their most recent date of participation, which has not otherwise been credited in accordance with § 54-3.

(2) Such eligible participants will contribute 2 1/2% of compensation as defined below for each year of service as defined above that they elect to buy back.

(3) Compensation will be base salary for fiscal year 1989-1990 or actual salary, if employed for a portion of such year, except for participants who will receive buy-back time for full-time service. For such participants, compensation will be the base salary while holding the full-time position.

(4) The additional contributions as outlined in this subsection must be made by participants electing to contribute such additional contributions no later than December 31, 1990. Otherwise, no additional credited service will be granted.

(5) Employees electing to make additional contributions under the provisions of this subsection will be not be eligible to receive retirement benefits under the provisions of this subsection unless retirement benefits commence no earlier than April 1, 1991.

§ 54-24. Contributions by Town.

The Town plans and intends to contribute to the trust fund over a period of time, in addition to the amounts contributed by participants, such amounts as may be determined by the actuary, according to such mortality, interest and other assumptions as may be approved by the Board from time to time, to be required to provide the benefits set forth in this plan for the participants.

§ 54-25. Discontinuance or change of contributions by Town.

The Town, however, reserves the right to reduce, suspend or discontinue its contributions under the plan for any reason at any time, provided that, anything in this plan to the contrary notwithstanding, it shall be impossible at any time prior to the satisfaction of all liabilities in respect to all participants, retired participants, contingent annuitants and beneficiaries under

the plan for any part of the trust fund to revert to the Town or to be used for or diverted to any purpose other than the exclusive benefit of participants, retired participants, contingent annuitants and beneficiaries.

ARTICLE IX
Leaves of Absence

§ 54-26. Leaves authorized; cancellation.

Any participant who enters the military service of the United States shall be given a leave of absence, and any participant may at any time, at the direction of the Board, be given a leave of absence for any other reason. Any such leave of absence must be given in advance and, except in cases involving military service, such leave of absence may be canceled at any time, in the discretion of the Board.

§ 54-27. Applicability on participation.

The provisions of the plan relating to termination of employment will not apply to any participant absent on leave of absence granted in accordance with § 54-26 of this article, but the following rules shall apply to such participant:

A. As long as such participant continues on leave of absence, as provided in § 54-26 of this article, the Town contributions otherwise required to provide the benefits for such participant set forth in this plan shall be suspended.

B. If such participant returns to active employment with the Town within 90 days following the end of such leave of absence, he shall continue as a participant hereunder as though he had continued in the active employment of the Town during such leave of absence. The Town contributions on behalf of such participant shall be resumed with such adjustments as the actuary shall determine to be necessary to provide the benefits set forth in this plan for such participant at his retirement.

C. If such participant does not return to active employment with the Town within 90 days following the end of such leave of absence, the employment of such participant shall be deemed to have been terminated as of the commencement of such leave of absence, and he shall be entitled to benefits provided under Article VII hereof as of such date.

§ 54-28. Effect on eligibility and service.

During a period of such leave of absence, an employee on such leave of absence shall be deemed to be in continuous employment of the Town for the purposes of the eligibility requirements of Article IV hereof and for the purpose of credited service, as defined in Article II hereof, provided that such employee returns to active employment with the Town within 90 days following the end of his leave of absence.

§ 54-29. Officials not reelected or reappointed.

Any employee who is an elected or appointed official of the Town and whose employment is terminated because he is not reelected or reappointed to an official position in the Town shall be given a leave of absence. Anything contained in this plan to the contrary notwithstanding, such employee shall not be entitled to credited service during the period of such leave of absence nor shall the period of such leave of absence be included for the purpose of determining the percentage of his vested benefit under § 54-22, but he shall be deemed to be in the continuous employment of the Town for the purpose of the eligibility requirements of Article IV hereof. Such participant may elect to terminate his leave of absence and be treated as a terminated participant under § 54-22 hereof by notice, in writing, to the Board.

ARTICLE X
Discontinuance of Plan

§ 54-30. Right to terminate.

Although the Town hopes to continue the plan and the contributions to the trust indefinitely, the Town may, by action at a Town Meeting, terminate the plan and all further contributions thereunder for any reason and at any time. If the Town temporarily discontinues its contributions or suspends them in whole or in part and if such temporary discontinuance becomes a permanent discontinuance, such permanent discontinuance shall be deemed to constitute termination of the plan as of the date the contributions were first discontinued.

§ 54-31. Allocation of assets upon termination. [Amended BOS 2-1-1977]

In the event of termination of the plan, the Board shall first allocate an amount of the trust fund to each participant, retired participant, contingent annuitant or the beneficiary of a deceased participant equal to the amount of the contributions to the trust fund made by such participant, retired participant or deceased participant, plus interest thereon compounded annually, less all amounts received from the trust fund by such participant, retired participant, contingent annuitant or beneficiary. Such amounts so allocated shall be paid to the respective participant, retired participant, contingent annuitant or beneficiary, unless a written election is made by such person to have the amount to which he is so entitled held in trust and added to the amount, if any, which shall be set aside for his benefit under the terms of the following sentence. The remaining net assets in the trust fund, after deduction of all termination expenses, shall then be allocated by the Board in an equitable manner among the participants, retired participants, terminated participants, contingent annuitants and beneficiaries of deceased participants in the following order of precedence, and such allocation shall be final:

Order of Precedence	Classification at Date of Termination
Class I	Participants who have passed their normal retirement date and whose retirement benefits have been deferred under the terms of § 54-18 hereof, retired participants, contingent annuitants and beneficiaries of deceased participants

Order of Precedence	Classification at Date of Termination
Class II	Participants age 55 or more who have at least 15 years of credited service and terminated participants who have elected to leave their contributions in the trust fund, as provided in § 54-22 hereof
Class III	All other participants

§ 54-32. Disposition of assets after allocation.

Such allocation shall be accomplished through either continuance of the trust fund or a new trust fund or purchase of insurance or annuity contracts as the Board shall determine.

§ 54-33. Restrictions imposed to meet federal regulations.

A. The following restrictions imposed by the provisions of this section are included solely to meet the requirements of the Treasury Department Mimeograph No. 5717, 1944 C.B. 321. In the event that it should be determined by federal statute or by ruling of the Commissioner of Internal Revenue that the provisions of this section are no longer necessary to qualify this plan under the Internal Revenue Code, this section shall be ineffective without the necessity of further amendment.

(1) Anything contained in this plan to the contrary notwithstanding, during the first 10 years after the effective date of this agreement, the benefits provided by the Town's contributions to the trust for the 25 highest paid employees of the Town as of the time of establishment of the trust, including any such high-paid employees who are not participants at such time but may later become participants but excluding any employees whose annual benefit provided by the Town will not exceed $1,500, will be subject to the following conditions:

(a) If the plan is terminated or the full current costs thereof have not been met at any time within 10 years after its establishment, the funds or benefits which any of such 25 employees may receive from Town contributions (including any unrestricted benefits, as hereinafter defined, but exclusive of any supplemental retirement income payments he has already received up to that time) shall not exceed his unrestricted benefits at that time.

(b) If any such employee leaves the employ of the Town or withdraws from participation in the plan when the full current costs have not been met, the funds or benefits which he may receive from Town contributions (including any funds or benefits he has already received) shall not, at any time within the first 10 years after establishment of the plan, exceed his unrestricted benefits at that time.

B. These conditions shall not restrict the full payment of any death or survivor's benefits on behalf of a participant who dies while the plan is in full effect and its full current costs have been met.

C. The foregoing conditions do not restrict the current payment of full retirement income benefits called for by the plan for a retired participant while the plan is in full effect and its full current costs have been met.

D. "Unrestricted benefits" mean, at any time, benefits of the form called for by this plan, including any withdrawal values available to a living employee and any death or survivor's benefits payable on behalf of a participant who dies after retirement, which have been provided by contributions of the Town not exceeding the larger of the following amounts:

(1) Twenty thousand dollars; or

(2) An amount equal to 20% of the first $50,000 of the employee's average regular annual compensation multiplied by the number of years since establishment of this plan.

E. "Supplemental retirement income payments" mean any current payments to a retired participant sufficient, together with his unrestricted benefits, to bring the total current payments to him up to the full retirement income benefits provided under the trust.

F. If and when the contributions by the Town are sufficient at a later date to meet the full current costs of the plan, the excess of the retirement income payments otherwise payable over the actual retirement income payments made during the period that such full current costs have not been met shall be paid in a lump sum to the retired participant or, if such participant has died in the meantime, to the beneficiaries of such participant.

ARTICLE XI
Trustee

§ 54-34. Designation. [Amended BOS 11-13-2002]

All contributions by the Town and the participants shall be committed in trust to a trustee appointed by the Board and pursuant to a trust agreement approved by the Board. The trustee shall have such power, rights and duties as may be specified in the trust agreement. The Board may from time to time appoint and remove, pursuant to an agreement approved by the Board, one or more investment managers who shall have such authority to direct investments to be made by the trustee, with respect to all or part of the assets of the trust fund, as may be specified in the agreement appointing the investment manager. The Board shall promptly notify the trustee of such appointment and of the terms, conditions, and any limitations of the investment manager's power to direct investments.

ARTICLE XII
General Provisions

§ 54-35. Trust to be for benefit of employees exclusively.

This plan and the trust provided for hereunder are created for the exclusive benefit of employees of the Town. Under no circumstances, except as provided for in Article XIII hereof, either in the event of the termination or amendment of the plan or otherwise, shall the

trust fund or any part of the corpus, income or avails thereof be used for or diverted to purposes other than the exclusive benefit of participants, retired participants, terminated participants, contingent annuitants and beneficiaries, except after satisfaction of all liabilities under the plan, in which case any remaining assets shall be paid over to the Town, provided that the trustee's reasonable fees and expenses for operating and/or terminating the trust after termination of the plan shall be paid from the trust fund.

§ 54-36. Amendments to plan.

The Town shall have the right, by action at a Town Meeting, to amend the plan in whole or in part at any time and from time to time, provided that no such amendment shall divert any part of the trust fund (remaining after the payment of all costs and expenses properly chargeable thereto) to purposes other than the exclusive benefit of the employees at any time prior to the satisfaction of all liabilities with respect to employees under the plan and trust. Any such amendment may be retroactive in its operation. No amendment shall be made which would affect the trustee without the trustee's written consent thereto. Anything contained herein to the contrary notwithstanding, the Board shall have the power to amend this plan without further action by the Town to the extent that any amendments may be required by the Internal Revenue Service as a condition to the qualification of this plan under the Internal Revenue Code.

§ 54-37. Plan does not create any contract of employment.

This plan shall not be construed as creating any contract of employment between the Town and any employee, and the Town shall have the right in all respects to deal with its employees, their hiring, discharge, compensation and conditions of employment as though this plan did not exist. No employee shall have any right to question the action of the Town in terminating its contributions to the trust or in terminating the plan in its entirety.

§ 54-38. Benefits not subject to encumbrances.

The trust fund is established for the purpose of providing for the support of persons who are to receive benefits under the plan. No benefit payable at any time under the plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment, garnishment or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge or otherwise encumber any such benefits, whether presently or thereafter payable, shall be void.

§ 54-39. Reliance on documents deemed to be legitimate.

The Town, the Board and the trustee shall be discharged from all liability in acting upon any notice, request, consent, letter, telegram or other paper or document believed by them to be genuine and to have been signed or sent by the proper person.

§ 54-40. Payments to persons deemed to be incapable of receipt.

If the Board shall determine that any person entitled to benefits of any form under the plan is legally, physically or mentally incapable of receiving and receipting for the payment of such benefits, then the Board may direct the trustee to make such payments or any part thereof to such other person, persons or institutions as the Board believes are then maintaining or have custody of such recipient, until claim for such payment is made by his or her duly appointed conservator or other legal representative. Such payment shall constitute a complete discharge of the liability of the trustee to the extent thereof.

§ 54-41. Minimum payments.

If any payments due hereunder shall amount to less than $20 a month, the Board may direct that such payments be made less frequently in such a manner that each payment will amount to at least $20.

§ 54-42. Titles and headings not part of plan.

The titles of the various articles and sections of this chapter are inserted herein solely for convenience of reference, do not constitute a part of the plan and shall be disregarded in construing, interpreting or applying any or all of the provisions hereof.

ARTICLE XIII
Revocability

§ 54-43. Revocation upon failure to meet federal requirement.

This plan and the trust created in connection with the plan are based upon the condition precedent that they shall be approved and qualified by the International Revenue Service as meeting the requirements of the Federal Internal Revenue Code and regulations issued thereunder with respect to employees' trusts, so that the Town's contributions will not be currently taxable to the participants as income. Accordingly, anything hereinabove contained to the contrary notwithstanding, if a final ruling shall be received, in writing, from the Internal Revenue Service that this plan and the trust do not qualify under the terms of Sections 401 and 501 of the Internal Revenue Code, there shall be no vesting in any participant of any assets of the trust fund held by the trustee, and the trustee, upon receipt of written notice from the Board, together with a copy of such a ruling, shall transfer and pay over to the Town all of the net assets in the trust fund remaining after deduction of proper expenses of termination, and the trust fund shall thereupon terminate. For the purposes of this article, "final ruling" shall mean either the initial letter ruling from the District Director, in response to the Town's original application for a ruling, or, if such letter ruling is unfavorable and a written appeal is taken or protest filed with 60 days of the date of such letter ruling, it shall mean the ruling received in response to such appeal or protest.

ARTICLE XIV
Post-Employment Benefits
[Added BOS 4-11-2012]

§ 54-44. Other post-employment benefits.

The Town hereby adopts the Other Post-Employment Benefits Declaration of Trust, effective May 17, 2012, for the benefit of the officers and employees, and their beneficiaries, of the Town and the Board of Education. A copy of the entire trust document is available for public inspection at the Office of the Town Clerk, 41 West Street, Cromwell, Connecticut 06416.