

Call to Artists – Proposals for Water Tower Design  
Lawrence Street Water Tower Design Competition  
Deadline: Thursday, June 27, 2024, at 4:00pm

### **Artist Opportunity**

The town of Middlebury invites artists and designers to submit preliminary designs for a piece of artwork to be incorporated into the painting of the new water tower on Lawrence Street. The selected design will be chosen by and approved by the Town Council members. The winning design will be replicated on the water tower in downtown Middlebury creating a unique and prominent landmark for our downtown.

### **Introduction**

The Town of Middlebury recognizes that art in public spaces is an important aspect of culturally vibrant cities and towns. Through public art, we celebrate our culture and heritage, reflect our diversity, express shared values, and define our unique identity.

### **Project Background**

- A new water tower will be built to replace the existing Lawrence Street water tower in 2025.
- Water towers are typically painted every 15 years.
- The tower is approximately 100 feet high, viewable from 360 degrees, and will hold 500,000 gallons of water – enough to fill an Olympic-sized swimming pool.
- This call is for a preliminary design only; the application and reproduction of the winning design will be completed by a specialized crew.

### **Design Specifications**

- The design must be limited to five solid colors without shading or black outlines.
- Because the design will be reproduced on a large scale, it must not be overly complex and must be simple enough to be visible from a distance.
- The design will be limited to the curved section of the tank's bowl.
- The word "MIDDLEBURY" or "Middlebury" must appear in the design.
- The image must be clearly "understood" from up to one mile away.
- The image should be positive and provide the "sense" of "Welcome to Middlebury."
- An element of the water tower is that the entire structure, legs/based through the tank itself, will be painted WHITE. The artist may elect to submit a proposal to paint the entire water tower another color other than white.
- A brief 200-word (maximum) explanation of why the concept design is appropriate as a positive message for and from the people of Middlebury to travelers who will view the water tower.

## Timeline

Project Phase	Date
Competition opens	May 28, 2024
Entry submission deadline	Thursday, June 27, 2024 at 4:00pm
Winner announced	July 15, 2024 at 6:00pm at Town Council Mtg
Winning design is applied to the water tower	Summer-Fall 2025

This timeline is subject to change. The Town reserves the right to modify these dates as needed.

## How to enter

There is no cost to enter the competition. The deadline for entry is Thursday, June 27, 2024, at 4:00pm. Questions can be directed to Mary Cripe, Middlebury Town Manager at [townmanager@middleburyin.com](mailto:townmanager@middleburyin.com) or call 574-825-1499.

All entries should be emailed to [townmanager@middleburyin.com](mailto:townmanager@middleburyin.com) and contain the following in a single PDF document (20MB maximum):

1. Entry form (see last page of this document).
2. Design statement (maximum of 200 words).
3. Up to three (3) full-color design sketches or renderings.

No extensions will be granted, and late or incomplete entries will not be considered.

## Terms and Conditions

Attached are the terms and conditions. There is no prize or compensation for the winning design.

## Disclaimer

The Middlebury Town Council reserves the right to reject any and all submissions.

TERMS AND CONDITIONS  
*Water Tower Design Competition*

By submitting a design entry in the 2024 Water Tower Design Competition (“Competition”) for the Town of Middlebury, Indiana (“Town”), I agree to these Terms and Conditions. I understand that these Terms and Conditions include, among other provisions, an affidavit of eligibility, liability release, indemnification, publicity release, and intellectual property assignment.

1. First Person References. All references to I, me, my, or other first-person terms contained in these Terms and Conditions refer to the party submitting a design in connection with the Competition. These Terms and Conditions are to be read from the perspective of the party agreeing to be bound by the same as a result of submitting their entry to the Competition.

2. Affidavit of Eligibility.

a. I reside in Elkhart County, I am a legal resident of the United States of America, and I am over 18 years of age. If I am submitting the design on behalf of a minor child, I am the minor child’s legally authorized guardian and I accept full and complete responsibility for the design submission. If I am submitting the design on behalf of a business organization (e.g. corporation, limited liability company, partnership), I certify that I have been given legal authority to submit the design, agree to the Terms and Conditions on behalf of the business, and make all representations and obligations required herein.

b. I hereby represent and affirm that I have read, have fully complied with, and will continue to comply with all the rules, regulations, terms and conditions set forth herein and otherwise set forth on [www.middleburyin.com](http://www.middleburyin.com).

c. I further represent and affirm that (1) all of the information I have provided and will provide to the Town government, as the Competition provider, has been and will be true, accurate, and complete; (2) I have not perpetrated and will not perpetrate any fraud or deception in connection with the Competition; and (3) I have not sought to influence the outcome of the Competition other than by participating in the Competition as expressly permitted in rules.

d. I further represent and affirm that I am not a member of the Town Council of the Town of Middlebury, Indiana or a relative (i.e. spouse, parent or stepparent, child or stepchild, sister or stepsister, brother or stepbrother, niece or nephew, aunt or uncle, or daughter-in-law, or son-in-law) of any member of the Town Council, and that I have not participated in the Competition on behalf of any such individual or entity.

e. I further represent and affirm that the Competition entry (i.e. water tower design) I submitted in the Competition (1) did not contain any elements that violate a third party’s patent rights, copyrights, or trademark rights; (2) did not contain content depicting any individual(s); (3) complies with all federal, state, and local laws applicable to this type

of competition including, but not limited to, Digital Millennium Copyright Act (DMCA) and the Communications Decency Act (CDA).

3. Liability Release. I, on behalf of myself, my heirs, executors and administrators, and any other person(s) or entities who may take by or through me, hereby fully, completely and finally waive, release, remise, acquit, and forever discharge, hold harmless, and covenant not to sue the Town, and all of its elected officers, board members and directors, affiliates, principals, employees, advertising and promotional agencies, attorneys, accountants, representatives, and agents (collectively, "Released Parties"), from and against any liability for any and all claims, demands, losses and liabilities of any nature whatsoever which I may now or hereafter be entitled to assert, at law or in equity, whether known or unknown, whether suspected or not, including without limitation, all claims and causes of action arising out of or in any way relating to the Competition or the prize. Such claims and causes of action include, but are not limited to, any death, injury, loss of enjoyment, property damage, or other harm or loss of any nature, any claims based on publicity rights, privacy rights, personality rights, "moral rights," or defamation, and any and all taxes levied, assessed or collected, whether caused by, contributed to, arising out of, or otherwise related to the Competition, the prize, or my possession, acceptance, use, or misuse of the prize, or my other acts or omissions in connection therewith.

I acknowledge and agree that the above release is a GENERAL RELEASE. I expressly waive and assume the risk of any and all claims for damages which exist as of this date, but which I do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect my decision to agree to these provisions. I expressly acknowledge that this waiver of claims includes any claims for any alleged fraud, deception, concealment, misrepresentation, or any other misconduct of any kind in procuring the release.

4. Publicity Release and Assignment. I hereby irrevocably grant to Town government, as the Competition provider and those acting under its authority, the unrestricted, absolute, perpetual, worldwide right and license to use my name, address (city and state), photograph, likeness, voice, biographical and personal background information, statements, and Competition entry, and, without limitation, any notes, photograph, film, or video or audio tape that may be taken of me or of such materials (the foregoing, collectively, the "Content"), without further compensation, consideration, or notice or permission to me or to any third party, and to reproduce, copy, modify, create derivative works of, display, perform, exhibit, distribute, transmit or broadcast, publicly or otherwise, or otherwise use and permit to be used the Competition submission or any part thereof, whether alone or in combination with other materials (including but not limited to text, data, images, photographs, illustrations, and graphics, video or audio segments of any nature), in any media or embodiment now known or hereafter developed including, but not limited to, any format of any computer-based, Internet-based, electronic, magnetic, digital, laser or optical-based media, for any purpose related to the Competition, and, as to my Competition entry, for any purpose whatsoever.

5. Relationships. Whether a third party or an existing employee, I acknowledge that I have made my anonymous submission independent of any relationship with Town government, and not as an employee, agent, or existing contractor of Town government. To the extent I already have a relationship of any nature with Town government, I acknowledge that these Terms and Conditions, and not any existing contract with Town government, provide the rights and obligations associated with my Competition submission. I understand that these Terms and Conditions do not create a partnership or joint venture and I am not authorized to act as agent or bind Town government as a result of my participation in this Competition. I further understand that in no event will Town government be responsible or liable for any of my debts, liabilities, or other obligations and I will be solely responsible for paying all taxes in accordance with federal, state, and local law related to my business (if applicable), my Competition submission, and any associated prize. Any persons employed or engaged by me in connection with this Competition will be the employees or contractors of me and I will be fully responsible for them and indemnify Town government against any claims made by or on behalf of any such employee or contractor or as a result of any action made by any such employee or contractor. All rights granted to Town government are contractual in nature and are wholly defined by these Terms and Conditions.

6. Intellectual Property.

a. Town government is and will be the sole and exclusive owner of all right, title, and interest throughout the world in and to all the results and proceeds of the submissions made by me in connection with the Competition, including but not limited to all design trademarks and websites created by me (collectively, the “**Deliverables**”) and all other writings, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, and materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, modified, conceived, or reduced to practice in the course of designing the submission (collectively, and including the Deliverables, “**Work Product**”) including all copyrights, trademarks (together with the goodwill symbolized thereby), trade secrets, know-how, and other confidential or proprietary information, and other intellectual property rights (collectively “**Intellectual Property Rights**”) therein. I agree that the Work Product is hereby deemed “work made for hire” as defined in 17 U.S.C. § 101 for Town government and all copyrights therein automatically and immediately vest in Town government. If, for any reason, any Work Product does not constitute “work made for hire,” I hereby irrevocably assign to Town government, for no additional consideration, my entire right, title, and interest throughout the world in and to such Work Product, including all Intellectual Property Rights therein, including the right to sue for past, present, and future infringement, misappropriation, or dilution thereof.

b. To the extent any copyrights are assigned under Section 6.a, I hereby irrevocably waive in favor of Town government, to the extent permitted by applicable Law, any and all claims I may now or hereafter have in any jurisdiction to all rights of paternity or attribution, integrity, disclosure, and withdrawal and any other rights that may be known as “moral rights” in relation to all Work Product to which the assigned copyrights apply.

c. Upon the request of Town government, during and after the Competition, I will promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, and provide such further cooperation, as may be necessary to assist Town government to apply for, prosecute, register, maintain, perfect, record, or enforce its rights in any Work Product and all Intellectual Property Rights therein. In the event Town government is unable, after reasonable effort, to obtain my signature on any such documents, I hereby irrevocably designate and appoint Town government as my agent and attorney-in-fact, to act for and on my behalf solely to execute and file any such application or other document and do all other lawfully permitted acts to further the prosecution and issuance of trademarks, copyrights, or other intellectual property protection related to the Work Product with the same legal force and effect as if I had executed them. I agree that this power of attorney is coupled with an interest.

d. I agree that none of my pre-existing materials are incorporated in or combined with any Deliverable. To the extent that any of my pre-existing materials are incorporated in or combined with any Deliverable or otherwise necessary for the use or exploitation of any Work Product, I hereby grant to Town government an irrevocable, worldwide, perpetual, royalty-free, non-exclusive license to use, publish, reproduce, perform, display, distribute copies of, prepare derivative works based upon, make, have made, sell, offer to sell, import, and otherwise exploit such preexisting materials and derivative works thereof. Town government may assign, transfer, and sublicense such rights to others without my approval.

e. As between myself and Town government, Town government is, and will remain, the sole and exclusive owner of all right, title, and interest in and to any documents, specifications, data, know-how, methodologies, software, and other materials provided to me by Town government (“**Town Materials**”), including all Intellectual Property Rights therein. I have no right or license to use, publish, reproduce, prepare derivative works based upon, distribute, perform, or display any Town Materials except to the extent permitted as a part of the Competition, and then only to the extent necessary to prepare a design submission for the Competition. All other rights in and to Town Materials are expressly reserved by Town government. I have no right or license to use Town government’s trademarks, service marks, trade names, logos, symbols, or brand names.

f. I will require each of my employees and independent contractors, to the extent applicable, to execute written agreements containing obligations of confidentiality and non-use and assignment of inventions and other work product consistent with the provisions of this Section 6 prior to such employee or contractor providing any services in connection with my Competition design submission.

7. My Representations and Warranties. I represent and warrants to Town government that:

a. I have the right to enter the design submitted in the Competition and accept and agree to be bound by the Terms and Conditions. I further have the right to grant the rights

granted herein, and to perform fully all of my obligations described in these Terms and Conditions.

b. I am entering my submission to the Competition with Town government and by performance of the same does not and will not conflict with or result in any breach or default under any agreement to which I am subject.

c. I have prepared my Town water tower design submission in compliance with all applicable federal, state, and local laws and regulations.

d. By entering my submission, Town government receives good and valid title to all Work Product, free and clear of all encumbrances and liens of any kind.

e. All Work Product is my original work (except for material in the public domain or provided by Town government) and do not and will not violate or infringe upon the intellectual property right or any other right whatsoever of any person, firm, corporation, or other entity.

8. Construction and Applicable Law. These Terms and Conditions and all related Competition materials will be construed so as to be valid and enforceable. Each provision of these Terms and Conditions will be construed as separate, and to that end, if any part of it is held invalid for any reason, the remainder will continue in full force and effect. The unenforceability of any provision will not affect the enforceability of any others or of the remainder of these Terms and Conditions. These Terms and Conditions are governed by and will be construed in accordance with the laws of the State of Indiana without regard to conflict of law principles.

9. Venue and Jurisdiction. I agree that the exclusive jurisdiction and venue for any legal proceeding arising out of or relating to my submission or these Terms and Conditions will be in the state courts in Elkhart County, Indiana or the federal courts in the Northern District of Indiana and I hereby waive any challenge to personal jurisdiction or venue in the specified courts.

10. Notice. All submissions for the Competition are to occur electronically at [www.middleburyin.com](http://www.middleburyin.com). Any notices that I send in connection with the Competition prior to the results of the Competition being released must be given by Certified Mail, Return Receipt Requested, and any such notice will be effective three days after being deposited in United States Postal Service with proper postage prepaid as follows:

TOWN GOVERNMENT:

Town of Middlebury  
Attn: Mary Cripe  
418 North Main Street  
Middlebury, IN 46540

With a required copy to:

Yoder Ainlay Ulmer & Buckingham, LLP  
Attn: Jackson W. Beck  
130 N. Main Street

Goshen, IN 46526

Any notices that I send in connection with the Competition after the results of the Competition are released must be given by Certified Mail, Return Receipt Requested, and any such notice will be effective three days after being deposited in United States Postal Service with proper postage prepaid as follows:

TOWN GOVERNMENT:

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Goshen, IN 46526

Any notice sent by Town government to me, either before or after the results of the Competition are released may be given by phone, email, or regular US Mail at the number, email address, and address divided in connection with my submission to the Competition.

11. Indemnification. I hereby represent and warrant that all statements made by me in these Terms and Conditions are true, accurate, and complete, and I hereby indemnify the Released Parties from and against any and all losses or damages (including attorneys' fees) arising out of or relating to any statements or representations made by me pursuant to these Terms and Conditions or otherwise in connection with the Competition or my Competition entry. I further agree to indemnify and hold harmless the Release Parties from and against any and all liabilities, damages and costs (including attorneys' fees) arising out of any third-party claims to the extent caused by or in connection with my, or anyone for whom I am legally responsible, willful misconduct, negligent act, error or omission.

12. Modification. To the extent Town government modifies these Terms and Conditions, the date of such modification will be included at the top in the following format: [Updated on: Month, Day, Year]. I agree to be bound by the Terms and Conditions in effect at the time of my submission for the Competition.

13. Attorney Fees. In the event Town government is required to retain legal counsel as a result of any breach of these Terms and Conditions, Town government will be entitled to reasonable attorneys' fees, costs, and expenses incurred. The preceding sentence is intended to be severable from the other provisions of this Agreement and to survive any judgment and, to the maximum extent permitted by law, will not be deemed merged into such judgment.

14. Entire Agreement. These Terms and Conditions, along with the additional rules and eligibility requirements set forth on [www.middleburyin.com](http://www.middleburyin.com) contain the entire agreement between me and Town government with respect to my submission for the Competition. To the extent any



conflict exists between these Terms and Conditions and the materials provided on [www.middleburyin.com](http://www.middleburyin.com). I agree that the provisions and these Terms and Conditions control.

15. Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and will not be deemed to constitute a part hereof.

16. Binding Effect. By entering a submission to the Competition, I agree that these Terms and Conditions will be binding upon and will inure to the benefit of my heirs, successors, and assigns.







