

**PARK USE AGREEMENT
LAKE AFTON PARK**

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the Sedgwick County, Kansas, hereinafter referred to as "County," and **Midwest Karting Association**, hereinafter referred to as "Licensee."

WITNESSETH:

WHEREAS, County controls, manages and operates Lake Afton Park, hereinafter referred to as "Park"; and

WHEREAS, Licensee has requested use of a portion of Park for the purpose of sponsoring and hosting the "**Lake Afton Enduro Kart Race**" for a period of five years.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties hereto agree to be bound by this Agreement as follows:

SECTION 1. USE GRANTED. County does hereby grant to Licensee exclusive use of a portion of the Park for the purpose of sponsoring and holding up to two (2) Events per year for "**Lake Afton Enduro Kart Race**" events of up to two (2) days each on dates mutually agreed upon between Licensee and Park Superintendent. Events shall be scheduled with the Park Superintendent no later than April 1 each year. Licensee may also be allowed a third Event of up to additional two days each year provided scheduling is coordinated with the Park Superintendent sufficiently in advance, as determined by Park Superintendent.

The use granted shall be limited to the portion of the Park shown highlighted on the attached Map, Exhibit A (hereinafter referred to as "Licensed Premises"). Said attachment is incorporated herein as if set out in full. All other areas will remain under the exclusive control of County and access thereto shall not be impaired by Licensee.

Licensee agrees to coordinate with Park Superintendent, or his designee, concerning any conditions he may have for the use of any property under his management and control. Park Superintendent or his designee has final authority as representative of County to interpret compliance with Park rules pursuant to the provisions of Sec. 20-106 through 20-121 of the *Sedgwick County Code* and any subsequent amendments thereto.

SECTION 2. TERM; FEES AND DEPOSITS. The term of this Agreement is for five (5) years beginning on the date of execution.

If shelter houses are to be used by Licensee or public access to shelter house(s) is restricted by Licensee, fees and deposits for said shelter house(s) shall be made in accordance with the currently applicable Sedgwick County Code.

All other fees and deposits will be paid in accordance with the currently applicable Sedgwick County Code. Licensee shall be responsible for and shall pay all costs of operating its events.

SECTION 3. DAMAGES. To the degree such indemnification is allowed by law, Licensee agrees to indemnify and hold harmless County, its agents, servants, employees or invitees, from and against any and all claims of every kind or character for injuries and/or

damages to persons and/or property arising out of or in connection with the use and occupancy of said County owned land, and not caused by County negligence.

SECTION 4. NOTICE OF CLAIM. County shall give to Licensee notice of any claim made or litigation instituted which directly or indirectly contingently or otherwise in any way affects or might affect it. Licensee shall have the right to compromise and participate in the defense of the same to the extent of its own interests.

SECTION 5. INSURANCE. Licensee shall carry and maintain general liability insurance against damage caused by Licensee members, agents, servants, employees, guests, invitees and participants in the event throughout the term of this Agreement in the amount of not less than \$500,000 combined single limit per occurrence for bodily injury, personal injury and property damage. **Licensee shall provide a Certificate of Insurance naming “Board of County Commissioners of Sedgwick County, Kansas, Lake Afton Park, and their officers, employees and agents” as additional insureds and shall submit such certificate to the Park Superintendent no later than thirty (30) days prior to the first date of use authorized by this Agreement.** It is an affirmative obligation on Licensee to advise County’s Risk Manager via fax (316/383-7674) or email (mmcbride@sedgwick.gov) within ten (10) calendar days of the cancellation or substantive change of any insurance policy required herein. Failure to give such notice is a material breach of this Agreement. Further, failure to maintain insurance coverage in the minimum amount specified above and/or failure to provide a certificate evidencing such coverage shall each be considered a material breach of this Agreement. Breach of this Agreement as set out in this section will result in cancellation of Licensee’s event.

SECTION 6. DEFACEMENT OF PARK. Unless prior written approval has been given by the Park Superintendent, Licensee shall not injure, mar, nor in any manner deface said premises or any equipment contained therein, and shall not cause or permit anything to be done whereby the said premises or equipment therein shall be in any manner injured, marred or defaced; and will not drive or permit to be driven nails, hooks, tacks, or screws into any part of said building or equipment contained therein, and will not make nor allow to be made any alterations of any kind to said building or equipment contained therein. Reasonable wear and tear is excluded.

SECTION 7. PREPARATION AND RESTORATION OF PREMISES. Licensee shall be responsible for preparation of the area for the above-stated events and shall also be responsible for the removal of all equipment, trash, debris, or other material of any kind or nature whatsoever that is brought in or left by any of its members, agents, servants, employees, guests, invitees, and participants.

SECTION 8. DISCRIMINATION PROHIBITED. Licensee will not on the grounds of race, color, sex, religion, physical handicap, national origin or ancestry discriminate or permit discrimination against any person or group of persons in any manner prohibited by law.

SECTION 9. ADDITIONAL EVENTS. Licensee shall not hold, provide or sponsor any events in addition to the use granted at Section 1 hereof which require the exclusive use of a designated area of Park without first having entered into a written agreement with County for such use.

SECTION 10. NOTICE. For purposes of this Agreement, notice shall be sent to:

Licensee: Midwest Karting Association
Attn: Kelly Read, President
7411 W. School
Wichita, KS 67212

County: Sedgwick County Counselor
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203

SECTION 11. COMPLIANCE WITH LAWS AND REGULATIONS. Licensee agrees to comply with all laws, ordinances and regulations adopted or established by federal, state or local governmental agencies or bodies. Licensee agrees to abide by all rules and regulations of Park and by any and all resolutions of the Board of County Commissioners governing said Park. Park Superintendent or his designee has final authority as representative of County to interpret compliance with Park rules pursuant to the provisions of Sec. 20-106 through 20-121 of the *Sedgwick County Code* and any subsequent amendments thereto.

SECTION 12. TAXES, EXCISE AND LICENSE FEES; PERMITS. Licensee agrees to promptly pay all taxes, excise or license fees and to take out all licenses or permits for use of Licensed Premises as required by federal, state or local laws and ordinances; and Licensee agrees to provide evidence of same to the Park Superintendent. Licensee also agrees to advise all exhibitors offering goods for sale (if any) that applicable sales tax returns must be filed, designating that sales were made in Sedgwick County, Kansas.

SECTION 13. CONCESSIONS. If Licensee operates or contracts for operation of a concession facility on the Park premises, Licensee shall operate and maintain such facility in a manner which sustains the highest rating issued by the local health department.

SECTION 14. UNAVOIDABLE HAPPENING. If, for any reason, an unforeseen event occurs, including, but not limited to fire, casualty, labor strike, or other unforeseen occurrence, which renders impossible the fulfillment of any term of this Agreement, the Licensee shall have no right to nor claim for damages against County.

SECTION 15. TERMINATION. This Agreement may be terminated at any time by mutual Agreement, or by either party upon giving thirty (30) days written notice to the other party as set forth in Section 10. This Agreement may be immediately terminated upon breach of any material term. Should Licensor exercise said right to terminate this Agreement, Licensee agrees to forego any and all claims for damages against Licensor and further agrees to waive any and all rights which might arise by reason of the terms of this license; and Licensee shall have no recourse of any kind against Licensor. Upon termination, Licensee, its agents and employees shall immediately vacate the premises.

SECTION 16. MODIFICATION. This Agreement may be modified, changed, or amended only as may be mutually agreed in writing between County and Licensee.

SECTION 17. ENTIRE AGREEMENT. It is understood that this Agreement supersedes and cancels any and all prior existing arrangement between the parties hereto and their predecessors concerning the uses provided for herein. Any matters not expressly provided for in this Agreement will be at the sole discretion of County.

SECTION 18. ASSIGNMENT. It is understood and agreed that Licensee shall not sell, assign or transfer any of its rights or privileges granted hereunder without the prior written consent of County.

SECTION 19. PUBLIC SAFETY. Licensee agrees that at all times, activities conducted will be with full regard to public safety, and Licensee will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and with County to assure such safety.

All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities on the premises shall be kept unobstructed by Licensee (unless clearly demarcated pursuant to Section 20) and shall not be used for any purpose other than ingress or egress to and from the premises by the Licensee.

Licensee agrees not to bring onto the premises any material, substances, equipment, or object which is likely to endanger the life of, or to cause bodily injury to, any person on the premises or which is likely to constitute a hazard to property thereon without the prior approval of the County. County shall have the right to refuse to allow any such material, substances, equipment or object to be brought onto the premises and the further right to require its immediate removal if found on the premises.

County shall retain the right to cause the interruption of any performance in the interest of public safety, and to likewise cause the termination of such performance when in the sole judgment of County, exercised in good faith, such act is necessary in the interest of public safety.

If the Sedgwick County Fire Marshal determines that the number of persons admitted to the Licensed Premises exceeds that allowed by the County Fire Code, the Park Superintendent or Fire Marshal may interrupt or terminate occupancy by Licensee and take such other reasonable action to reduce the population to the proper levels.

SECTION 20. PUBLIC FORUM. Licensee acknowledges and agrees that the park premises (including the Licensed Premises) is a traditional public forum and that County will make no efforts to exclude or prohibit activities allowed by the First Amendment. Should Licensee wish to exclude persons from the Licensed Premises, Licensee shall: 1) clearly fence off, outline, partition or otherwise demarcate Licensee's area of exclusive use; 2) post readily apparent notice to the public that occupancy of the particular demarcated area is prohibited unless authorized by Licensee; and 3) post a legible copy of this Agreement in a conspicuous place near the Licensed Premises.

SECTION 21. COPYRIGHTS. Licensee shall assume all costs arising from the use of patented, trademarked, franchised, or copyrighted music, materials, devices, processes or dramatic rights used on or incorporated in the events that are the subject matter of this Agreement. Licensee specifically warrants that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives. Further, Licensee agrees to indemnify and hold harmless the Board of County Commissioners of Sedgwick County, Kansas, their agents, employees and servants from any and all claims, losses

or expenses incurred with regard to the above recited costs, charges, authorization or license fees to the extent such indemnification is allowed by law.

SECTION 22. LICENSOR RIGHT OF ENTRY. Duly authorized representatives of Licensor may enter the premises to be used, and all of the Licensed Premises, at any time and on any occasion for any lawful purpose. All facilities, including the area which is the subject of this Agreement, and all parking areas shall at all times be under the charge and control of Licensor.

SECTION 23. OBJECTIONABLE PERSONS. Licensor reserves the right to eject or cause to be ejected from the premises, any objectionable person or persons; and neither Licensor nor any of its officers, agents or employees shall be liable to Licensee for any damages that may be sustained by Licensee through the lawful exercise by Licensor of such right.

SECTION 24. OCCUPANCY INTERRUPTION. That in case the Lake Afton Park facilities described herein or any part thereof shall be destroyed or damaged by fire, vandalism, labor strike, act of God or any other cause, or if any other casualty shall render the fulfillment of this Agreement by Licensor impossible, including without limitation thereto, the requisitioning of the Licensed Premises by the United States Government or any arm or instrumentality thereof, then and thereupon this Agreement shall terminate and the Licensee shall pay rental for said premises only up to the time of such termination, prorated at the rates herein specified. Licensee may, with the approval of the Park Superintendent, leave exhibits, equipment or show materials in the premises, but Licensee assumes full responsibility in doing so in accordance with the above. Licensee shall have no right to nor claim for damages against Licensor for the interruption of occupancy.

SECTION 25. SUIT TO ENFORCE. Should Licensor believe that Licensee has failed to comply with any of the material terms in this Agreement, Licensor shall give Licensee written notice and Licensee shall have 3 days in which to comply with said stated material term of this Agreement. If Licensee fails to remedy or correct, then Licensor may institute suit or other action against Licensee as a result of Licensee's failure to comply with any material term of this Agreement, and Licensor may recover damages as provided by law, costs and disbursements as provided by statute, and any court costs actually incurred, including reasonable attorney's fees.

SECTION 26. LICENSOR COVENANTS. Licensor warrants and represents that: (i) it has full and complete authority to enter into this Agreement under all of the terms, conditions and provisions set forth herein and the person who signs this Agreement on behalf of Licensor is authorized to do so; (ii) except as herein provided, no other person shall have any right or claim to use the Licensed Premises herein on the use dates set forth in section 1 and for the space and time otherwise reserved to Licensee hereunder and so long as Licensee keeps and substantially performs the terms, provisions and conditions herein contained, on the part of Licensee to be kept and performed, Licensee shall peacefully and quietly enjoy all the Licensed Premises without interference or molestation by Licensor or by any other person claiming by, through or under Licensor; (iii) the Licensed Premises and all improvements therein (except those which may be installed by Licensee) do conform to all applicable statutes, ordinances, rules and regulations of federal, state and municipal governments and all other applicable authorities; (iv) the Licensed Premises are free and clear of all claims, liens or encumbrances which may affect the rights granted to Licensee hereunder.

SECTION 27. DEFAULT. Should the Licensee default in the performance of any of the terms and conditions of this Agreement, the Park Superintendent, at his option, may terminate the same. Licensee shall be liable for the full amount of the fees provided for herein, less rent charges received from others for use of the premises at the time, or times, specified in this Agreement. Any deposit made by Licensee to Licensor shall be retained by Licensor and considered as liquidated damages.

SECTION 28. LIEN. Licensor shall have the first lien against ticket office receipts and all property of Licensee upon the premises of Licensor for all unpaid rental fees, reimbursable expenses and appropriate taxes due of the event(s) covered by this Agreement. If such funds are not available at the conclusion of the event, Licensor is empowered to impound Licensee's property. Should such unpaid charges remain unpaid ten days after the termination of this Agreement, Licensor shall have the power to sell such property at public auction, and to apply cash proceeds from such auction to the retirement of these unpaid charges.

SECTION 29. PERFORMANCE APPROVAL. Licensor retains approval right of performance, exhibition or entertainment to be offered under this Agreement, and Licensee agrees that no such activity or part thereof shall be given or held if Licensor files written objection on the grounds of character offensive to public morals, failure to uphold event advertising claims or violations of event content restrictions agreed to by both parties at the time of completion of this Agreement.

SECTION 30. RETENTION OF LICENSOR PRIVILEGES. Waiver or failure of Licensor to insist upon strict and prompt performance of the covenants and Agreements hereunder, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of Licensor's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of Licensee.

SECTION 31. CAPTIONS AND COUNTERPARTS. The captions of this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of the paragraph involved or the intent of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SECTION 32. APPROVAL OF AGREEMENT. This Agreement will not be in force until both parties have signed it and the Board of County Commissioners of Sedgwick County has given approval.

SECTION 33. APPLICABLE LAW. This Agreement shall be governed by the laws of the state of Kansas.

SECTION 34. CONTRACT DOCUMENTS. The contract documents consist of this Agreement and all attachments thereto, including exhibits, schedules and other documents however denominated and all executed modifications issued subsequent thereto.

SECTION 35. CONSENTS. All consents or approvals required pursuant to this Agreement shall not be unreasonably or arbitrarily withheld or delayed.

SECTION 36. LOST ARTICLES. The Licensor shall have the sole right to collect and have the custody of articles left in the premises by persons attending any performance, exhibition or entertainment given or held in the Licensed Premises, and the Licensee or any person in Licensee's employ shall not collect nor interfere with the collection or custody of such articles.

SECTION 37. REPRESENTATIONS. The parties to this Agreement represent and warrant that each has the full right, power and authority to enter into, and perform its obligations under this Agreement and that the terms and conditions of this Agreement shall not violate, interfere with or infringe upon the rights of any third parties pursuant to written agreement or otherwise. Each party further represents that it has obtained all of the necessary approvals and has complied with all laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by signature of their duly authorized officers the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

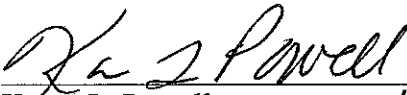
ATTEST:

KELLY B. ARNOLD, County Clerk

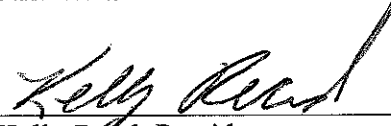
TIM R. NORTON, Chairman
Commissioner, Second District

APPROVED AS TO FORM:

MIDWEST KARTING ASSOCIATION



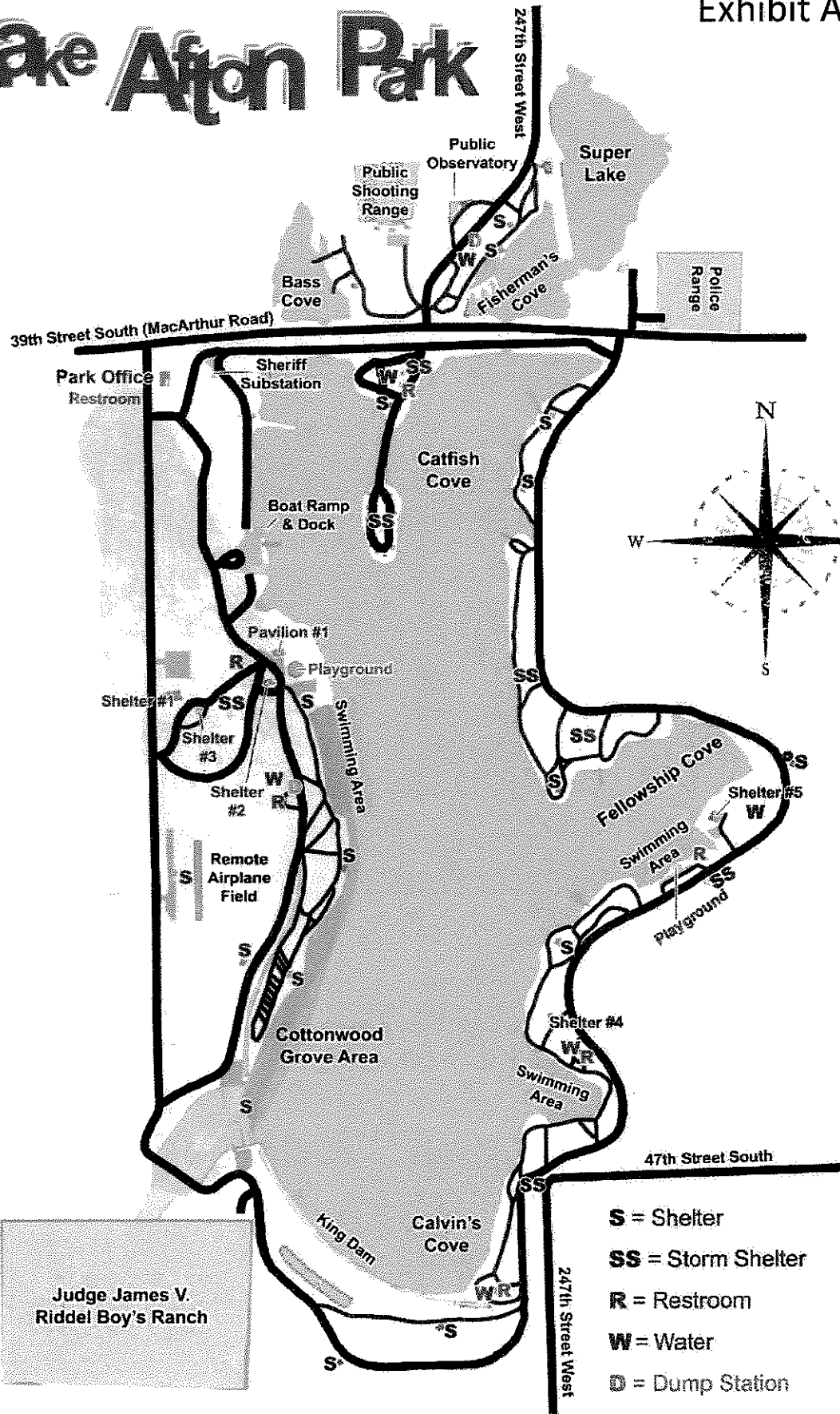
Karen L. Powell 2-16-12
Assistant County Counselor



Kelly Bead, President

Lake Afton Park

Exhibit A



Judge James V.
Riddell Boy's Ranch

LAKE AFTON PARK FEES, DEPOSITS AND PERMITS

Shelter House/Pavilion Rental

Shelter #1, capacity 140:	\$150.00/day; Deposit \$150.00.
Shelter #2, capacity 76:	First day \$75.00, each consecutive day \$37.50; Deposit \$150.00.
Shelter #4, capacity 50:	First day \$30.00, each consecutive day \$15.00; Deposit \$60.00.
Shelter #5, capacity 75:	First day \$75.00, each consecutive day \$37.50; Deposit \$150.00
Pavilion, capacity, 110:	\$150.00/day; Deposit \$150.00.

Recreational Permits

Daily (valid until noon of following day) \$3.00; an additional 50 cents per permit will apply when purchased at a non-fixed location.

Annual (valid for calendar year) \$25.00; additional vehicles, same ownership \$12.50.

Exceptions. Recreational permits are not required when participating in events at Lake Afton Public Shooting Range and Lake Afton Public Observatory, nor for those persons participating in an event which is duly licensed for exclusive use of the park. Other exceptions may apply; check with Park Superintendent.

Boating Permits

If purchased at the park office or at the self-pay station:

Row, canoe, sail: \$3.00/day; resident \$30.00/year.

Electric – Up to 20 HP: \$3.00/day; resident \$30.00/year.

21 HP – 99 HP: \$5.00/day; resident/\$50.00.

100 HP and above: \$6.00/day; resident \$60.00/year.

Boat Dealers (demonstration and testing purposes only): \$125.00/year.

An additional 50 cents per permit will apply when purchased at a non-fixed location.

Camping Permits

If purchased at the park office or at the self-pay station:

Primitive: \$7.00/day; \$42.00/week.

Electric: \$11.00/day; \$66.00/week; \$240.00/ month.

Senior citizens:

Primitive: \$6.00/day; \$36.00/week.

Electric: \$9.00/day; \$54.00/week; \$195.00/month.

An additional 50 cents per permit will apply when

purchased at a non-fixed location. Water hookups are an additional one dollar (\$1.00) per day. Recreational permits will be issued for dates corresponding to camping permit dates at no additional cost. Large groups should contact Park Superintendent regarding reduced rates.

Special Events

Car shows: \$250.00

Runs/walks/bicycle races or similar events: \$100.00

GoKart/Road Races: \$375.00

An additional fee for vendors or promotional booths may apply.

Large Events

Large Events (over 500 people) will be assessed a Large Event Fee of \$250.00.

SEDGWICK COUNTY PARK FEES, DEPOSITS AND PERMITS

Shelter House/Grill Rental

Small, open-sided #5: \$25.00 per day.

Medium, open-sided #1, 2, 3: \$40.00 per day.

Large, open-sided #4: \$60.00 per day.

Horseshoe, enclosed: Deposit \$150.00; \$90.00 per day.

Plum, enclosed: Deposit \$150.00; \$75.00 per day.

Sunflower, enclosed: Deposit \$150.00; \$150.00 per day.

BBQ grill: \$40.00 per day.

Special Events

Runs/races (with Plum or Horseshoe shelter): \$100.00

Runs/races (with Sunflower shelter): \$175.00

Car shows (with Plum or Horseshoe shelter): \$175.00

Car shows (with Sunflower shelter): \$250.00

Festivals, carnivals, Pow Wows, etc: \$350.00

Remote control boat race events: \$100.00

An additional fee for vendors or promotional booths may apply.

Large Events

Large events (over 500 people) will be assessed a Large Event Fee of \$250.00.

Sign Rental

1 - 3 days: \$40.00. 4 - 7 days: \$50.00.

SHELTER HOUSE PERMIT

Sedgwick County Park

	#1	#2	#3	Permit Fee	Deposit Fee *
Open-sided Shelter (circle one)				_____	_____
Horseshoe Shelter				_____	_____
Plum Shelter				_____	_____
Sunflower Shelter				_____	_____
Other: _____				_____	_____

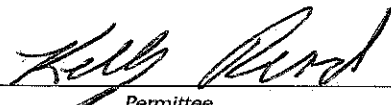
Lake Afton Park

#1 Shelter.....	2			300 ⁰⁰	
#2 Shelter.....	2			112.50	
#3 Shelter					
#4 Shelter					
#5 Shelter					
#1 Pavilion	2			300 ⁰⁰	
#1-A Pavilion					
#1-B Pavilion					
Other: <u>Event Fee</u>				375 ⁰⁰	
				<u>\$1087.50</u>	

Permittee: Name: Lake Afton Enduro Kart Race
 Address: 7411 W. School
 City, State, Zip Code: Wichita, KS 67212
 Daytime Phone: _____ Evening Phone: _____

Date(s) and time(s) of use permitted: _____

- * The deposit fee may be refunded after the use date to the permittee upon restoration of the premises to pre-use condition, subject to the Park Superintendent's approval of the restoration and the refund.
- * **A deposit fee and a permit fee shall be nonrefundable, except upon the permittee's proof of extraordinary circumstances acceptable to the park superintendent.**



 Permittee

 Park Superintendent

I acknowledge return of deposit fee on this _____ day of _____, 19_____.

 Permittee

1. Payment required 30 days prior to rental date.
2. Permittee shall be liable for costs of clean-up of shelter or pavilion.
3. Permittee shall be liable for destruction and/or damages caused by self, guests and invitees to shelter or pavilion and/or contents.
4. Permittee shall be liable for missing furnishings and equipment.
5. Permittee shall be liable for payment of labor and materials to repair any damages.
6. Permittee shall gain pre-approval of Park Superintendent before attaching decorative items to or in any shelter or pavilion.
7. Permittee, guests and invitees shall be subject to all Sedgwick County park rules and regulations, and also to all provisions of the Uniform Fire Code as currently in effect in Sedgwick County.