

City of South Daytona
Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: James L. Gillis Jr., City Manager
From: Becky Witte, Deputy City Clerk
Re: Consideration of Agreement with Giles Electric Company Inc for Temporary Parking Use at Blaine O'Neal Park.
Date: December 6, 2021

AGENDA ITEM

Item # 18

Date: December 14, 2021

Giles Electric Company is performing property improvements at 952 Big Tree Road. They have requested permission for Giles Employees and Fortiline Employees to park at Blaine O'Neal Park for the duration of the construction which they anticipate will take two to three months.

Staff has drafted an agreement for temporary automobile parking purposes at 980 Big Tree Road with hours of use Monday through Friday 6:00 am until 6:00pm until March 15, 2022. Vehicles must be legally parked in a single parking space and parking across parking spaces is prohibited. The agreement also includes that vehicles may not block or impede pedestrian areas or sidewalks as well as a hold harmless clause.

Construction was set to commence on December 6, 2021. Temporary permission was granted pending council approval of the attached agreement.

Staff recommends approval of the agreement to expedite the construction process and property improvement efforts of the owners of 952 Big Tree Road (Giles Electric Company Inc).

**TEMPORARY PARKING USE AGREEMENT BY AND BETWEEN
THE CITY OF SOUTH DAYTONA, FLORIDA
AND GILES ELECTRIC COMPANY INC**

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this 14th day of December 2021, by and between the City of South Daytona, Florida, a Florida municipality, (hereinafter referred to as the "City"), whose mailing address is 1672 S. Ridgewood Avenue, South Daytona, Florida 32119, and Giles Electric Company Inc, (hereinafter referred to as "User") whose address is 952 Big Tree Road, South Daytona, Florida, 32119. The City and User may be collectively referenced herein as the "Parties."

WITNESSETH:

WHEREAS, the City owns Blaine O'Neal Park, located at 980 Big Tree Road, South Daytona, Florida which includes a paved Parking Area; and

WHEREAS, Blaine O'Neal Park is adjacent to the property and the parking area is currently available Monday through Friday 6:00am until 6:00pm.

WHEREAS, the City is agreeable to allowing User use of the Parking Area to expedite the construction process and property improvement efforts of the owners of 952 Big Tree Road.

NOW, THEREFORE, in consideration of the mutual promises made herein, the City and User agree as follows:

1. Owner hereby grants to User the right to use the Parking Area for temporary automobile parking purposes at 980 Big Tree Road.
2. Hours of use by User shall be limited as follows: Monday through Friday 6:00 am until 6:00pm.
3. Vehicles must be legally parked in a single parking space. Parking across parking spaces is prohibited. Vehicles may not block or impede pedestrian areas or sidewalks.
4. **Hold Harmless.** User agrees to and will at all times indemnify, save and hold harmless the City of South Daytona from all liability, claims, demands, damages and costs of every kind and nature, including attorney's fees at trial or appellate levels and all court costs arising out of injury to or death of User's employees, agents, contractors, subcontractors, customers, invitees, and guests, and damage to any and all property, including loss of use thereof, resulting from or in connection with activities or use of the above facilities by User, its employees, agents, contractors, subcontractors, customers, invitees, and guests, or resulting from the negligence, intentional torts, and criminal actions of User, its employees, agents, contractors, subcontractors, customers, invitees, and guests. User and the City acknowledge and agree that User is solely responsible for the reasonable

supervision, control, protection and safety of User's employees, agents, contractors, subcontractors, customers, invitees, and guests. User shall upon request from the City, defend and satisfy any and all suits arising from User's use of the premises. This paragraph and all indemnification and hold harmless provisions of this agreement shall survive the termination and expiration of this Agreement.

5. **Term and Termination.** This Agreement will begin on December 6, 2021 and will continue until March 15, 2022. Either party can terminate this Agreement with or without cause on 10 days written notice.
6. **Severability.** If any term or provision of this Agreement is determined by a court to be invalid or unenforceable, such finding will not affect the remaining terms and provisions of this Agreement, which shall remain in full force and effect.
7. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it. The signatories hereof represent that they have the requisite and legal authority to execute this Agreement and bind the respective parties herein.
8. **Entire Agreement/Modification.** This Agreement, together with the exhibit(s), constitutes the entire integrated Agreement between the City and User and supersedes all prior written or oral understandings in connection therewith. This Agreement, and all the terms and provisions contained herein, including without limitation the exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral. This Agreement may only be amended, supplemented or modified by a formal written amendment.
9. **Governing law, Venue and Interpretation.** This Agreement is to be governed by the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida. This Agreement is the result of bona fide arm's length negotiations between the City and User, and all parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against either party as the drafter.
10. **Waiver.** The failure of the City to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to the City of South Daytona hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.
11. **Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

12. **Assignment.** The User shall not make any assignment or transfer of any of its rights, obligations, or duties to a third party without the express written permission of the City, and any such attempt to do so shall be void and of no force or effect..

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of South Daytona and Giles Electric Company Inc have executed this instrument for the purpose herein expressed.

City of South Daytona:

Giles Electric Company Inc:

James L. Gillis, Jr., City Manager

Approved as to form and legality
for use and reliance by the City of South Daytona, Florida

By:_____
Wade C. Vose, Esq.
City Attorney