

CITY OF DANA POINT

MEMORANDUM

DATE: **October 6, 2026**

TO: **Honorable Mayor and City Council**

FROM: **Jeff Rosaler, Assistant City Manager**

SUBJECT: **Item 8 – Lantern Bay Park Improvements**

After the publication of the Agenda, language was modified within the Right of Entry, Construction and Development Agreement between the City of Dana Point and Alagem Capital Group, LLC, a Delaware limited liability company, for the Lantern Bay Park Improvements. The updated agreement will replace Action Document A as published on October 1, 2026 for City Council approval.

CC: Kelly Reenders, City Manager
 Patrick Munoz, City Attorney

ACTION DOCUMENT A

RIGHT OF ENTRY, DEVELOPMENT, AND CONSTRUCTION AGREEMENT (LANTERN BAY PARK IMPROVEMENTS)

This Right of Entry, Development, and Construction Agreement (this “Agreement”) is entered into as of _____, 2026 (the “Effective Date”) by and between the City of Dana Point, a California municipal corporation (“City”), and Regency Laguna, LP, a Delaware Limited Partnership, doing business as The Ocean Cliffs at Dana Point, a JW Marriott (“Resort”). City and Resort are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

- A. Resort is the owner and operator of the hotel property commonly known as The Ocean Cliffs at Dana Point, a JW Marriott Resort, located at 25135 Park Lantern, Dana Point, California (the “Resort Property”). Resort is undertaking an approximately \$60 million renovation of the Resort Property.
- B. City is the owner of the public park commonly known as Lantern Bay Park, consisting of approximately 15.47 acres adjacent to the Resort Property, as more particularly described in Exhibit “A” (the “Site”). City operates and maintains the Site as a public park.
- C. In connection with Resort’s renovation, South Coast Water District installed new water lines within a portion of the Site to serve the Resort Property (the “Water Lines”). Water Lines are owned by South Coast Water District.
- D. In recognition of the City’s cooperation with the installation of the Water Lines, and to benefit the public, Resort has agreed to design, construct, and pay for certain landscape, hardscape, and amenity improvements within the Site, as described in this Agreement.
- E. Resort’s landscape architect, Burton Landscape Architecture Studio, prepared a schematic design package for the Lantern Bay Park Improvements dated August 25, 2026, which is attached as Exhibit “B.”
- F. City desires to have the improvements constructed and requires that Resort have a temporary right of entry onto the Site to do so. On October 6, 2026, the City Council approved the conceptual design and this Agreement and authorized the City Manager to execute this Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

- 1. Right of Entry.
 - 1.1 Grant. City grants to Resort, and to Resort’s contractors, consultants, and agents, a temporary, non-exclusive, revocable (only as provided in Section 13) right of entry onto the portion of the Site depicted in Exhibit “C” (the “Right of Entry Area”) solely for the

purpose of constructing the Improvements (as defined in Section 2.1) in accordance with this Agreement. Staging, storage of materials and equipment, and contractor parking are permitted only in locations approved in writing by City.

- 1.2 Term. The right of entry begins on the Effective Date and ends upon City's written acceptance of the Improvements under Section 5.5, unless terminated earlier under Section 13. Resort may enter the Site after acceptance only to perform warranty work under Section 5.6, with at least forty-eight (48) hours' prior notice to City, except in an emergency.
- 1.3 City's Reserved Rights. City retains the right to enter and use the Right of Entry Area for any purpose that does not unreasonably interfere with Resort's performance of its obligations under this Agreement. All portions of the Site outside of construction fencing shall remain open to the public.
- 1.4 No Other Interest. This Agreement does not grant Resort any ownership interest, leasehold, permanent easement, or exclusive right to use any part of the Site.

2. The Improvements.

- 2.1 Scope. Resort shall, at its sole cost, design and construct, or cause to be constructed, the following improvements on the Site (collectively, the "Improvements"), all in accordance with the Plans and Specifications (as defined in Section 2.2), including the cost of design, construction, installation, and inspection to the satisfaction of City:
 - (a) Removal of the trees identified for removal in the tree survey prepared by West Coast Arborists, dated November 4, 2025, and approved by City, including trees located in the center of the park and along the pathway leading to the amphitheater, and trees near the grass area associated with the bocce ball court closest to Golden Lantern; including stump grinding and removal of all debris;
 - (b) A botanical garden consisting of planted beds, decomposed granite main and secondary paths, benches, and botanical name signage;
 - (c) Minor grading and regrading of the Smyth Brothers Amphitheater so that it is flush with the adjacent walk and accessible in compliance with the Americans with Disabilities Act, including any retaining walls, hardscape, turf, lighting, and wayfinding shown in the Plans and Specifications;
 - (d) The Arbor Walk, including wood trellis with climbing roses, specimen trees, and planted slopes along the existing walk leading to the amphitheater;
 - (e) The Mosaic Stair Walk, a tree-lined concrete walk from the existing boulder entry at the Dana Point Harbor Drive stairs to the botanical garden;
 - (f) A decomposed granite walking trail connecting Golden Lantern to the Lantern Bay Park walkways, and a concrete walkway connecting the Resort Property event lawn to the park walkways;

- (g) Drainage systems, including subterranean and surface pipes, surface drains, receptacles, and covers;
- (h) Irrigation modifications and extensions necessary to support the new landscaping, compatible with City's existing irrigation system and controllers;
- (i) Landscaping for the botanical garden, Arbor Walk, amphitheater, and other enhanced areas of the Site, using the plant palette shown in the Plans and Specifications; and
- (j) Restoration of all areas of the Site disturbed by installation of the Water Lines or by construction of the Improvements, including turf, irrigation, walkways, and plantings, to a condition equal to or better than their condition before disturbance.

2.2 Plans and Specifications. Resort shall cause a California licensed landscape architect to prepare construction plans and specifications for the Improvements that are consistent with Exhibit "B" (the "Plans and Specifications") and submit them to City for review and approval by the Director of Community Services and the Director of Public Works, or their designees. Resort shall not begin construction until City has approved the Plans and Specifications in writing. Any material change to the approved Plans and Specifications requires City's prior written approval.

2.3 Protected Areas. The play structure, the trees to the south surrounding the play structure, the lawn area used for yoga, the bocce ball court, and the restrooms shall not be disturbed, except as expressly shown in the approved Plans and Specifications.

3. Construction.

3.1 Manner of Construction. Resort shall construct the Improvements in accordance with the approved Plans and Specifications, in a professional and workmanlike manner, using contractors holding the appropriate California contractor licenses, without damaging any property of City or others, in full compliance with California Occupational Safety and Health Administration requirements and all applicable federal, state, and local laws, codes, ordinances, and regulations.

3.2 Schedule. Resort shall notify City at least ten (10) business days before the date Resort intends to begin construction (the "Commencement Date").

3.3 Construction Hours and City Events. Construction shall occur only during the hours permitted by the Dana Point Municipal Code. Resort shall coordinate its schedule with City so that construction does not interfere with City sponsored events or previously permitted park rentals at the Site.

3.4 Public Safety. Resort shall install and maintain construction fencing, signage, and other measures reasonably required by City to protect park users, and shall keep pedestrian access to the Dana Point Harbor Drive stairs and the unaffected areas of the Site open to the extent feasible. Resort shall keep the Right of Entry Area clean, safe, and free of debris during construction.

- 3.5 Permits and Fees. City and Resort shall cooperate and take all reasonable measures to expedite review of the Plans and Specifications and issuance of any permits required for the Improvements. City waives its permit and inspection fees for the Improvements.
4. Payment of Costs. Resort shall pay all costs of the Improvements, including the costs of preparing the Plans and Specifications, engineering, construction, materials, inspection, bonds, insurance, and attorneys' fees relating to Resort's performance. City has no obligation to pay or reimburse Resort for any cost of the Improvements.
5. Completion, Acceptance, and Warranty.
 - 5.1 Oversight and Inspection. City and Resort shall jointly inspect the Improvements using qualified staff. The Resort shall always make the area accessible to the inspector.
 - 5.2 Final Inspection and Punch List. When Resort believes the Improvements are substantially complete, it shall notify City. City and Resort shall jointly perform a Final Inspection of the Improvements within ten (10) business days, and City shall provide Resort with a list of any items that must be corrected. Resort shall complete all punch list items within thirty (30) days.
 - 5.3 Plant Establishment Period. Resort shall maintain all new landscaping and irrigation for a period of ninety (90) days after substantial completion, including watering, weeding, and replacing any plant material that dies or fails to thrive.
 - 5.4 Closeout Documents. Before acceptance, Resort shall deliver to City: (a) as-built drawings, including irrigation plans, in paper and electronic format; (b) manufacturer warranties and operation and maintenance information for irrigation equipment, lighting, and water bottle filling stations; and (c) unconditional lien releases from all contractors, subcontractors, and suppliers.
 - 5.5 Acceptance. Upon completion of Sections 5.1 through 5.4 to City's satisfaction, the City Manager or designee shall accept the Improvements in writing. Upon acceptance, the Improvements become the property of City, free of all liens and claims, and City shall assume ongoing maintenance of the Improvements.
 - 5.6 Warranty. Resort warrants the Improvements against defects in materials and workmanship for one (1) year after acceptance and warrants that all trees will remain alive and healthy for one (1) year after acceptance. Resort shall correct any defect or replace any failed tree within thirty (30) days after written notice from City.
6. Water Lines. The Parties acknowledge that the Water Lines are owned, operated, and maintained by South Coast Water District, and that this Agreement does not affect the District's rights or obligations regarding the Water Lines. Resort shall coordinate construction of the Improvements with the District to avoid damage to the Water Lines.
7. Bonds. Before beginning construction, Resort shall furnish to City a performance bond and a payment bond, each in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements, issued by a surety admitted in California and in a form

approved by the City Attorney. The performance bond shall remain in effect through the warranty period under Section 5.6.

8. Insurance. Before entering the Site, Resort shall provide, and shall cause its contractors to provide, the following insurance, with the City, its officials, officers, employees, agents, and volunteers named as additional insureds on the general and automobile liability policies, on a primary and non-contributory basis:
 - (a) Commercial general liability insurance of not less than [\$2,000,000] per occurrence and [\$4,000,000] aggregate;
 - (b) Automobile liability insurance of not less than [\$1,000,000] per accident; and
 - (c) Workers' compensation insurance as required by the State of California, and employer's liability insurance of not less than \$1,000,000 per accident, with a waiver of subrogation in favor of City.
9. Free of Mechanic's Liens. Resort shall pay, when due, all claims for labor and materials furnished for the Improvements. Resort shall, at its sole cost, promptly cause any mechanic's or materialmen's lien recorded against the Site to be discharged or bonded around, and shall indemnify City against any such lien as provided in Section 11.
10. Non-Interference; Damage. Neither Party shall interfere with the operation of the other Party's business or activities conducted on or near the Site. If any property of City, any park user, or any other person is damaged as a result of Resort's exercise of its rights under this Agreement, Resort shall promptly repair the damage at its own expense.
11. Assumption of Risk; Indemnification. Resort's exercise of its rights under this Agreement is at its sole risk. Resort shall defend, indemnify, and hold harmless City and its officials, officers, employees, agents, contractors, and volunteers from and against all claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, for loss of or damage to property or injury to or death of any person arising out of or relating to (a) Resort's entry onto or use of the Site, , or (b) any breach of this Agreement by Resort, except to the extent caused by the sole negligence or willful misconduct of City. This Section survives the expiration or termination of this Agreement.
12. Park Use and Events. The completed Improvements are part of a public park and shall remain open to the public. Resort may apply for park rental and special event permits for the Site in accordance with the City's Park Use Policy and the Dana Point Municipal Code, and City will not unreasonably withhold approval of permits that comply with those requirements. This Agreement does not give Resort any priority, exclusive use, or fee reduction for the Site.
13. Default and Remedies. If Resort fails to perform any obligation under this Agreement and does not cure the failure within thirty (30) days after written notice from City (or, if the failure cannot reasonably be cured within thirty (30) days, does not begin the cure within that time and diligently complete it), City may, in addition to any other remedy available at law or in equity: (a) terminate the right of entry; (b) complete or correct the Improvements and recover its costs from Resort or the sureties; and (c) require Resort to restore the Site to a safe condition. Either Party may bring an action for specific performance to enforce this Agreement.

14. General Provisions.

- 14.1 Entire Agreement; Amendment. This Agreement, including its Exhibits, is the entire agreement between Resort and City regarding its subject matter and supersedes all prior negotiations and understandings. This Agreement may be amended only in a writing signed by both Parties. The City Manager may approve minor changes to the Plans and Specifications and schedule extensions on behalf of City.
- 14.2 Waiver. A waiver of any provision of this Agreement must be in writing. A Party's failure to insist on strict performance of any provision or to exercise any remedy is not a waiver of that provision or remedy for any later breach.
- 14.3 Notices. Notices under this Agreement must be in writing and are considered given (a) when personally delivered, (b) two (2) business days after deposit in the United States Mail, certified, return receipt requested, postage prepaid, (c) one (1) business day after deposit with a reputable overnight delivery service, or (d) when sent by email, if a copy is also sent by one of the other methods. A Party may change its notice address by notice to the other Party. Notices shall be sent to:

To City:	City of Dana Point 33282 Golden Lantern Dana Point, California 92629 Attn: City Manager Email: kreenders@danapoint.org
To Resort:	Regency Laguna, LP c/o Alagem Capital Group 9355 Wilshire Blvd #300 Beverly Hills, CA 90210 Attn: Theodore F. Kahan, President Cc: The Ocean Cliffs at Dana Point 25135 Park Lantern Dana Point, California 92629 Attn: Ben Ly, General Manager

- 14.4 Further Action. Each Party shall sign and deliver any further instrument reasonably required to give full effect to this Agreement.
- 14.5 Assignment; Successors. Resort may not assign this Agreement without City's prior written consent. This Agreement binds and benefits the Parties and their permitted successors and assigns.
- 14.6 Authority. Each Party represents that it is authorized to enter into and be bound by this Agreement and that the individual signing on its behalf is authorized to do so. Upon

request, Resort shall provide City with its governing documents and authorizing resolutions or consents.

- 14.7 Governing Law; Venue. The laws of the State of California govern this Agreement. Any action arising out of this Agreement shall be brought in the Superior Court of California, County of Orange.
- 14.8 Interpretation. The captions in this Agreement are for convenience only and do not affect its meaning. Words in the singular include the plural and vice versa. This Agreement shall be interpreted as if drafted jointly by the Parties. Whenever this Agreement requires Resort to perform an act, Resort shall do so at its sole cost unless otherwise stated.
- 14.9 Attorneys' Fees. If any action is brought to enforce or interpret this Agreement, the prevailing Party is entitled to recover its reasonable attorneys' fees and costs.
- 14.10 No Third-Party Beneficiaries. Nothing in this Agreement creates any right in favor of any person other than the Parties.
- 14.11 Severability. If any provision of this Agreement is held invalid, the remaining provisions remain in full force and effect.
- 14.12 Time of the Essence. Time is of the essence of each provision of this Agreement.
- 14.13 Counterparts; Electronic Signatures. This Agreement may be signed in counterparts, each of which is an original, and together constitute one instrument. Electronic signatures have the same effect as original signatures.

(Signatures on following page)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF DANA POINT a California municipal corporation	Regency Laguna LP, a Delaware limited partnership
By: _____ Kelly Reenders, City Manager	By: Oasis LC I LLC, a Delaware limited liability company, its general partner
ATTEST:	By: _____ Printed Name: Theodore F. Kahan Title: President
By: _____ Shayna Sharke, City Clerk	By: _____ Printed Name: _____ Title: _____
APPROVED AS TO FORM:	
By: _____ A. Patrick Munoz, City Attorney	