



# ADVANCED VERTICAL SOLUTIONS, LLC.

24 HOUR ELEVATOR SERVICE · HOME TO HIGHRISE · 11140 SW 109TH AVE. TIGARD OR. 97223 · (503)-UP-N-DOWN

## PREVENTIVE CARE AGREEMENT

EFFECTIVE DATE: January 15, 2015

**CLIENT:**

CITY OF NEWPORT - NYE BEACH  
ATTN: TIM GROSS  
169, SW COAST HWY  
NEWPORT, OR 97365  
(541) 574-3369  
(541) 574-0603  
EMAIL: JOHN@NEWPORTOREGON.GOV

**AVS ELEVATOR:**

ADVANCED VERTICAL SOLUTIONS, LLC.  
DOING BUSINESS AS: AVS ELEVATOR  
PREPARED BY: FRANK A STALEN  
24 HOUR: (503) 876-3696  
24 HOUR: (503) UP-N-DOWN  
TOLL FREE: (877) 221-8554  
EMAIL: FRANK@AVSELEVATOR.COM

*AVS Elevator: agrees to maintain clients specified equipment as stated in this Agreement. This Preventive Care Agreement will endeavor to provide you a Maintenance Control Program to maximize the Safety, Performance and Longevity of your buildings elevator equipment.*

As of the date set forth above, Client and AVS Elevator agree as follows:

**1. Preventative Care Services:** Client shall pay AVS Elevator the sum of \$525.00 per quarter-year and AVS Elevator shall perform Preventative Care Services. Preventative Care Services include a complete operational check(s) in compliance with the Oregon Elevator Specialty Code for each elevator, escalator or dumbwaiter described in paragraph 2 below. The operational check shall include verification of the following: Check starting, operating, leveling and stopping parameters, including proper operation of elevator car and hoist way doors to maintain operation within local code requirements, including all testing as recommended in the Guide for Inspection of Elevators, Escalators and Moving Walks, ASME A17.2-2010 as adopted by the 2011 Oregon Elevator Specialty Code. All work will be performed by an AVS Elevator member or card holding I.U.E.C. 23 Union member, directly employed and supervised by AVS Elevator. All other services shall be considered Additional Services and billed extra as set forth in paragraph 4 below.

**2. Equipment Description:**

Equipment ID	Landings	Capacity	Speed	Install Date	Manufacture
ALT13-00096	2	2100	80	2/5/2014	EECO/AVS

**3. Service Hours:** AVS Elevator will perform the preventive care services described in paragraph 1 on a scheduled basis during normal business hours, Monday thru Friday 8:00 am to 5:00 pm (excluding common USA holidays and the Friday after Thanksgiving).



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4. **Additional Services:** Client will be billed at the following rates for all repair and/or service calls that are Additional Services:

<i>One Man Callbacks:</i>	<i>\$175.00 / hr. plus mileage &amp; parking</i>
<i>Crew Callbacks:</i>	<i>\$300.00 / hr. plus mileage &amp; parking</i>
<i>Overtime One Man Callbacks</i>	<i>\$250.00 / hr. plus mileage &amp; parking</i>
<i>Overtime Crew Callbacks</i>	<i>\$450.00 / hr. plus mileage &amp; parking</i>

Additional Services include but are not limited to: cosmetic, construction, or ancillary elevator components or systems, including finishing, repairing or replacement of cab, fans, frames, panels, fixtures, door panels, sills, flooring, car lighting, microprocessor, proprietary equipment, software, power disconnect switches and their fuses, hoistway structure, cab lighting bulbs, and/or tubes, elevator machines, motor generator sets, and hoist ropes, casings, jacks, hydraulic plungers and hydraulic lines. This Agreement also specifically excludes repair of damage caused by negligence, obsolescence, or misuse of elevator equipment by others, or by reason of any other cause beyond AVS Elevator's control. Additionally, the correction of existing inspection violations, or permitting fees and inspections ordered by the State of Oregon or any other state, federal or local agency is not covered under this contract.

5. **Price Adjustments:** If the term of the agreement exceeds one year, AVS Elevator may automatically adjust the price for its services effective as the first of the year. This adjustment will be equal to the percentage increase or decrease in AVS Elevator's union contract with IUEC 23 straight time hourly labor cost. In addition, AVS Elevator reserves the right to add annual surcharges to the price of the agreement, including without limitation, adjustments for the then current price of fuel and charges for disposal or other environmental requirements.

6. **Invoices and Payment:** AVS shall provide an invoice for all services provided to Client. Payment is due thirty (30) calendar days from the date of the invoice. Invoices outstanding beyond thirty (30) calendar days shall incur interest at the rate of nine percent (9%).

7. **Additional Client Responsibilities:**

a. **Product Information:** Client agrees to maintain and provide AVS Elevator with current wiring diagrams and manuals for the equipment covered by this agreement. Client agrees to provide AVS Elevator access to any programmable device(s) used in the equipment covered by this agreement for the purpose of backup and programing of equipment hardware and software. These items are critical for your equipment and safety. These items shall remain in Clients control.

b. **Safety:** Client shall instruct its staff and passengers in the proper use of equipment subject to this agreement. It is Clients responsibility to monitor any irregularities between scheduled AVS Elevator preventive care visits and report all irregularities to AVS Elevator. Client shall shut down the equipment immediately upon manifestation of any irregularities in operation or appearance in the equipment and post out of service signage and barricade the equipment as needed. After these safety precautions are observed, Client shall notify AVS Elevator immediately and keep the equipment shut down until the completion of the repairs. Client shall keep the equipment under continual surveillance by competent persons to detect such



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irregularities between periods of AVS Elevator's preventive care examinations. Client shall give AVS Elevator immediate written notice after occurrence of any accident in or about the described equipment.

c. Access and Safety: Client hereby agrees to provide AVS Elevator with unrestricted ready and safe access to all areas of the building in which any parts of the equipment to be serviced are located and to keep all machine rooms and pit areas free from water, stored materials, and debris. Client agrees to provide a safe workplace for the AVS Elevator's personnel, and to remove and remediate any waste or hazardous materials in accordance with applicable laws and regulations.

*Client's failure to adhere to the above cited responsibilities set forth in this paragraph 7 shall constitute a material breach of the Agreement.*

### 8. Limitation of Liability and Indemnity:

a. It is understood that AVS Elevator, when not working in, on or about the equipment described in paragraph 2 does not assume management or control of the equipment.

b. Nothing in this Agreement shall be construed to provide that AVS Elevator assumes any liability for accidents to persons or properties except those directly attributable to the negligence of AVS Elevator or its employees.

c. Client will not permit others to make repairs, alterations, additions or modifications to the equipment being serviced hereunder and AVS Elevator shall not be liable for any claims or damages of any type, including claims from third parties, relating to alterations, additions or modifications to the equipment performed by individuals and/or entities other than AVS Elevator.

d. AVS Elevator and its employees shall not be liable for any claims or damages of any type, including claims from third parties if Client fails to adhere to the responsibilities set forth in paragraph 7.

e. Notwithstanding anything to the contrary in this agreement, AVS Elevator's total liability to Client under the agreement is limited to the total amount paid by Client to AVS Elevator during the calendar year in which the liability occurred.

f. In no event will either party be liable to the other party for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature arising from or related to performance of the agreement, including without limitation loss of profits, loss or inaccuracy of data, or loss of use damages, even if the party has been advised of the possibility of such damages and even if under applicable law such damages would not be considered for indirect, incidental, punitive, special, or consequential damages. Each party hereby waives its rights to such damages to the fullest extent permitted by applicable law.

g. Each party will indemnify, defend, and hold the other party harmless from and against any and all claims, demands, actions, suits, proceedings, judgments, damages, loss, liabilities, costs, or expenses, including without limitation court costs and reasonable attorney's fees, arising from or related to the indemnifying party's negligence or willful misconduct in performance of the agreement. Each party's indemnity obligations are expressly conditioned on the indemnified party: giving the indemnifying party prompt written notice of each claim; promptly tendering to the indemnifying party the defense or settlement of each claim; and cooperating with the indemnifying party at the indemnified party's expense in defending or settling each claim.



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**9. Term and Termination:** This agreement will commence on the Effective Date and continue for an initial period of one year from the Effective Date. This agreement will thereafter automatically renew for successive one year terms unless one of the parties provides written notification to the other party that it does not wish to renew the agreement no less than ninety days nor more than one hundred twenty days prior to the expiration date of the then current term of the agreement.

If a party materially breaches the agreement, the other party may provide written notice of the breach and a reasonable time under the circumstances to cure the breach, but in no event less than a thirty day cure period. If the breaching party fails to cure the breach within the specified time period, the non-breaching party may terminate the agreement upon fifteen days written notice to the other party. If AVS Elevator notifies Client of a material breach pursuant to this paragraph, AVS Elevator may temporarily suspend services under this agreement during the specified cure period.

**10. Cancellation Fee:** If Client cancels or otherwise terminates the agreement in any way inconsistent with the termination provisions of the agreement, Client will pay as a cancellation fee an amount equal to **fifty percent** of the balance of the total price which would have been paid by Client for the remaining term of the agreement.

**11. Assignment:** Either party may assign the agreement to a third party upon thirty day prior written notice to the other party subject to the terms of this provision. If Client transfers ownership of the premises on which such equipment is located to a third party, Client will promptly provide AVS Elevator with new owner's contact information and take all such actions as are necessary to assign the agreement to the third party. Client will promptly provide AVS Elevator with a copy of such assignment.

**12. Suspension of Service:** If Client fails to pay any invoice within the specified payment terms or if Client breaches any material provision of the agreement, AVS Elevator may stop work or suspend its services until all invoices are current or Client cures the breach. Any requests for service during the period of suspension of service or repairs necessitated by the lack of maintenance service will be invoiced by AVS Elevator and paid separately by Client. If Client fails to make timely payment, any indemnity provided by AVS Elevator under the agreement is null and void as to any damages that arise during the period of non-payment. Client waives all claims against AVS Elevator arising from or related to suspension of service pursuant to this provision.

**13. Property Rights:** AVS Elevator will provide Client with any of its information or materials that it provides generally to all its customers in the ordinary course of its business. Any tools, devices, or other equipment that AVS Elevator uses to perform its services remains its sole property. If AVS Elevator's contract terminates or expires for any reason, Client will give AVS Elevator access to the premises to remove such equipment at AVS expense. AVS Elevator retains all rights, title, and interest, including all intellectual property rights, in and to the written materials it provides to Client or uses to perform its services, including without limitation shop drawings, technical documentation, and user manuals, and to any software provided with the equipment. Client will not use such software except in connection with the use and operation of the equipment. Client will not reverse engineer or otherwise attempt to obtain the source code of any software in object code form.



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### 14. Miscellaneous Provisions:

a. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, without reference to principles of conflict of laws.

b. Notices. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by overnight delivery service (e.g., Federal Express), by facsimile (with confirmation of receipt by intended recipient), or by certified or registered mail (postage prepaid and return receipt requested), to the other party at the address set forth beneath such Party's signature, and will be effective upon receipt or five business days after being deposited in the mail as required above, whichever occurs sooner. Either Party may change its address by giving notice of the new address to the other Party.

c. Publicity and Marketing. Client agrees AVS Elevator is entitled to reference Client as a customer of AVS Elevator in any advertisement, news release or other public announcement, and hereby provides AVS Elevator with a limited license to utilize Client's tradename and/or trademark in marketing materials. *APM*

d. Severability. In the event that any provision of this Agreement is found to be unenforceable or invalid under any applicable law or applicable court decision, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

e. Waiver. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

f. Entire Agreement; Modifications. This Agreement and its Exhibits constitutes the agreement between the Parties regarding the subject hereof and supersedes all prior oral or contemporaneous agreements, understandings, and communication, whether written or oral with respect to the subject matter hereof. The terms of this Agreement may not be altered or modified, except pursuant to a writing specifically referencing this Agreement and signed by an authorized representative of each of the Parties.

g. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. A facsimile or scanned signature will have the same effect as an original signature.

h. No Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of each of the Parties and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

i. Force Majeure. Any cause or circumstance of whatever nature which prevents or delays performance by a Party of its obligations hereunder (other than a payment obligation), including any riot, labor dispute, strike or civil disturbance, or any applicable law or action of a governmental authority, which cause or circumstance is not within the reasonable control of the Party chargeable, and which cannot by the exercise of reasonable diligence by such Party be prevented or overcome, shall extend the time for performance thereof, provided such cause or circumstance was the proximate cause of the failure to perform.



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*AVS Elevator: agrees to maintain clients specified equipment as stated in this Agreement. This Preventive Care Agreement will endeavor to provide you a Maintenance Control Program to maximize the Safety, Performance and Longevity of your buildings elevator equipment.*

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

AVS ELEVATOR:  
ADVANCED VERTICAL SOLUTIONS, LLC  
D/B/A: AVS ELEVATOR

By Frank A. Stalen  
Frank A. Stalen, President

Client:  
City of Newport  
169 SW Coast Hwy  
Newport, OR 97365  
By Spencer R. Nebel  
Spencer R. Nebel, City Manager