



# CITY OF HUNTINGTON BEACH

## Sole-Source Justification

(For use on all goods and services acquisitions.)

This justification document consists of two (2) pages. All information must be provided and all questions must be answered. The "Required Approvals" section must include a date for each signature, as appropriate for the transaction.

Requesting Department Information			
<b>Date:</b> March 29, 2022			
<b>Requestor Name:</b> Sgt. Jeff Goodspeed		<b>Division Manager:</b> Capt. Haught (Type names. Do not sign.)	
<b>Department:</b> Police		<b>Department Head:</b> Chief Parra (Type names. Do not sign. Must be same as signature below.)	
Department Contact Information			
<b>Contact Name:</b> Sgt. Jeff Goodspeed		<b>Street Address:</b> 18401 Gothard St., Huntington Beach, Ca 92648	
<b>Telephone:</b> 714-536-5997		<b>Shipping Address:</b> Same	
<b>Fax:</b>			
<b>Cellular phone:</b>			
Required Contact Information			
<b>Contractor/Supplier Name:</b> L3 Harris Technologies, Inc. Wescam USA Inc.			
<b>Contractor/Supplier Address:</b> 424 Aviation Blvd.			
<b>Contractor/Supplier City/State/Zip:</b> Santa Rosa, CA 95403			
<b>Original Contract Amount:*</b> <b>\$None</b> <small>(*Includes original contract and previously approved amendments)</small>	<b>Amendment Amount:*</b> (if applicable) <b>\$N/A</b> <small>(*Current amendment only)</small>	<b>New Contract Amount:*</b> <b>\$414,554.86</b> <small>(*Includes original contract and all amendments, including current amendment)</small>	
<b>Provide a brief description of the acquisition, including all goods and/or services the contractor will provide:</b>			
Contract Type and Term			
<b>Contract Type:</b>  Select One: <input checked="" type="checkbox"/> Goods <input type="checkbox"/> Service <input type="checkbox"/> Goods & Services	<b>Contract Term:</b>  Begin:  End:	<b>What account number will be used to purchase?</b>  Business Unit:  Object Code:	
Required Approvals			
<b>Department Head</b> <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied  Signature 3/30/22 Date	<b>Principal Finance Analyst</b> <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied  Signature 3/31/2022 Date	<b>Chief Financial Officer</b> <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied  Signature 3/31/2022 Date	<b>Assistant City Manager</b> <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied  Signature 3/31/2022 Date (Transactions exceeding \$50,000 must be approved by City Council)



# CITY OF HUNTINGTON BEACH

## Sole Source Justification

(For use on all goods and services acquisitions.)

Complete responses must be provided for all of the following items.

**A. THE GOOD/SERVICE REQUESTED IS RESTRICTED TO ONE SUPPLIER FOR THE REASONS STATED BELOW:**

**1. Why is the acquisition restricted to this goods/services/supplier?**

(Explain why the acquisition cannot be competitively bid.)

The Air Support Unit had two L3 Wescam camera systems. Recently one was damaged beyond repair. The aircraft and peripheral systems can be only wired to one system. It would be impossible to use another vendor's system in our helicopters.

**2. Provide the background of events leading to this acquisition.**

The air support unit cannot operate at full capability with only one camera. The unit traditionally operates with two, but one was recently damaged beyond repair.

**3. Describe the uniqueness of the acquisition (why was the good/service/supplier chosen?).**

When the first two cameras were purchased they were put out to bid and the L3 Wescam was selected. The aircraft were specifically set up for that system. The same system needs to be purchased to replace the one that was damaged.

**4. What are the consequences of not purchasing the goods/services or contracting with the proposed supplier?**

The Air Support Unit would experience significant down times if this camera is not purchased.

**5. What market research was conducted to substantiate no competition, including evaluation of other items considered?**

(Provide a narrative of your efforts to identify other similar or appropriate goods/services, including a summary of how the department concluded that such alternatives are either inappropriate or unavailable. The names and addresses of suppliers contacted and the reasons for not considering them must be included OR an explanation of why the survey or effort to identify other goods/services was not performed.)

When the original cameras were purchased, significant research was done to determine the L3 Wescam was the best and most economical option. At this point the L3 Wescam is the only option as the aircraft are already set up for that system.

**B. PRICE ANALYSIS**

**1. How was the price offered determined to be fair and reasonable?**

(Explain what the basis was for comparison and include cost analyses as applicable.)

When the cameras were originally purchased it was determined that the L3 Wescam system was less expensive than their competitors and their product was superior. L3 is offering a significant discount on this proposed purchase as well. This system is still cheaper than their competitors.

2. **Describe any cost savings realized or costs avoided by acquiring the goods/services from this supplier. To switch camera systems would cost approximately \$1.5 million dollars. This would be to retrofit the aircraft with the new system and purchase the necessary second camera. This option is not feasible.**

Remit completed form to:

City of Huntington Beach – Purchasing Division  
2000 Main Street, Huntington Beach, CA 92648-2702



# City of Huntington Beach

## MATERIAL REQUISITION

<b>Requestor:</b>	Sgt. Jeff Goodspeed	<b>Date of Request:</b>	3-30-22
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<b>Approved by:</b>	Lt. Nesmith <i>W</i>
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<b>Vendor:</b>	L3 Harris Technologies Inc Wescam USA Inc.	<b>Ship to:</b>	Huntington Beach Police Air Support Unit
<b>Address:</b>	424 Aviation Blvd.	<b>Address:</b>	18401 Gothard St
<b>City/State/Zip:</b>	Santa Rosa, CA 95403	<b>City/State/Zip:</b>	Huntington Beach CA 92648
<b>Attention:</b>	Sarah Pastene	<b>Ship to Attention:</b>	Lt. Nesmith

Quantity	Unit	Description	Amount
1		MX-10	\$262,600
1		EOW-LLC-MX10	\$19,500
1		HDIR-MX10	\$49,920
1		EON-MX10	\$39,000
1		GEO-GPS-MX10	\$15,600
1		MX-HCU	\$9,048
1		HCU-BKT	\$800

<b>Account #:</b>	
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<b>Notes:</b>	
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<b>Sub-Total:</b>	\$383,624.00
<b>Sales Tax:</b>	\$29,730.86
<b>Shipping:</b>	\$1,200.00
<b>TOTAL:</b>	\$414,554.86





Wescam USA Inc.  
L3Harris Technologies, Inc.

424 Aviation Blvd.  
Santa Rosa, CA 95403  
Phone: 707 236-1077  
[www.L3Harris.com](http://www.L3Harris.com)

5 April, 2022

Huntington Beach PD  
18401 Gothard St.  
Huntington Beach, CA 92648  
United States of America

Attention: Jeff Goodspeed– Sgt  
Email: [jagoodspeed@hbpd.org](mailto:jagoodspeed@hbpd.org)  
Tel: 714-536-5997

Reference: Your Request for Quotation for WESCAM MX-10 EO/IR System

Subject: L3Harris Offer 22WUSA042-1 for WESCAM MX-10 EO/IR System

In support of Huntington Beach Police Department, L3Harris provides this updated response for the supply of WESCAM MX-10 EO/IR Sensor System. Our standard warranty of one (1) year / 1,000 hours has been increased to two (2) years / 1,000 hours at no additional charge. As an investment in this opportunity, a One Time Only Discount of 5% has been applied to the MX-10 pricing offered herein.

The **WESCAM MX™-10** continues the evolution of the MX product line by delivering big performance in a small package that incorporates all electronics inside the gimbal (no separate electronics box) to deliver unmatched IR, EO and night-time imagery. With each order for MX-10 system(s), L3Harris will provide a 60 day eLearning demo license for the Operation and Organizational Maintenance Course.



**MX-10 Product Page:** <https://www.l3harris.com/all-capabilities/wescam-mx-10-air-surveillance-and-reconnaissance>

Ken Scarboro will be in contact with you to further discuss your requirements and the contents of this submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah K. Pastene".

Sarah K. Pastene  
Sr Spec, Proposal Mgmt

**Wescam USA**  
**A Subsidiary of L3Harris Technologies Inc.**

Email: [Sarah.Pastene@L3Harris.com](mailto:Sarah.Pastene@L3Harris.com)  
Tel: 707-477-0124

c.c. Ken Scarboro, Sales Director, ALE Systems. Email: [Ken.Scarboro@L3Harris.com](mailto:Ken.Scarboro@L3Harris.com) Phone: 707-477-0128



## Benefits of a MX™-Series Solution:

**SEE FIRST. ACT FIRST. WITH L3HARRIS'S ADVANCED "WESCAM MX-SERIES" PRODUCT LINE.**

L3Harris has sold nearly 6,700 systems (6,100 MX Series systems) worldwide to civil and military customers while meeting the highest standards of ethical business conduct.

### User Benefits:

- **Proven Performance** – Class leading image stabilization results in unprecedented imager range performance for Detection, Recognition and Identification (DRI) of all targets. WESCAM MX-Series EO/IR systems regularly outperform the competition during side by side demonstrations.
- **Reduced Mission Time & Cost** – Greater range performance means seeing further and being able to detect, recognize and identify targets sooner. That translates into less fuel and equipment usage and shorter mission times.
- **Superior Ease of Use** – Customers report that MX systems are easier to use than competitive systems. Stable and accurate geo-referenced auto and auto-aid steering modes greatly reduces operator workload in keeping the imager's line-of-sight on target.

### Integrator Benefits:

- **Ease of Integration** – Integrators report integrating a WESCAM MX-Series system is easy. To date MX systems have been integrated on 230+ platforms and with a wide variety of mission management systems and with all types of supporting systems (radar, GPS, search lights, etc.).
- **Rugged, Reliable and Supportable** – Qualified to MIL standards, with extensive supplemental life testing of key assemblies, the fielded Mean Time Between Failure (MTBF) of WESCAM MX Series systems set industry standards, with many customers reporting MTBF's exceeding thousands of hours.

### Maintainer Benefits:

- **Worldwide Support** – To provide end-users with high operational availability, L3Harris Field Service Representatives (FSRs) can quickly support equipment from 14 services centers located in strategic geographic locations worldwide. L3Harris routinely supports products which are 15-20 years old, demonstrating our commitment to our products and customers.
- **Upgradeable Design** – The MX family of camera systems are of a modular design that lends itself to incremental upgrades as new technology becomes available.
- **Commonality Across MX-Series Systems** – Eases software and hardware integration with customers who have mixed fleets of systems. Operational and maintenance procedures are the same allowing users to seamlessly transfer between systems.





# L3HARRIS™

***L3Harris – Offer # 22WUSA042-1  
Huntington Beach Police Department / MX™-10***



**L3HARRIS™**  
FAST. FORWARD.



This document includes data that must not be duplicated, used, or disclosed - in whole or in part - for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offer or as a result of - or in connection with - the submission of this data, the Purchaser will have the right to duplicate, use or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Purchaser right to use information contained in this data if it is obtained from another source without restriction.





# L3HARRIS™

## WESCAM MX™-10 Price Submission

Qty	Model or Part No.	Description	Unit Price	Total Price
<b>MX-10 Small Multi-Sensor, Multi-Spectral Imaging System</b>				
1	<b>MX-10</b> (P/N 44620-4XXX)	<p>WESCAM MX™-10</p> <ul style="list-style-type: none"> <li>&gt; Precision stabilized 4-axis gimbal with inertial measurement unit (IMU) inside</li> <li>&gt; Internal electronics unit</li> </ul> <p>Note: "4XXX" to be defined as a variant number post contract award, pending selection of customizable options below.</p> <ul style="list-style-type: none"> <li>&gt; Multi sensor payload (base configuration):               <ol style="list-style-type: none"> <li>1) Thermal imager, cooled MWIR, SD 640 x 512 pixel, continuous zoom</li> <li>2) High sensitivity color daylight imager, HD 1920 x 1080 pixel, continuous zoom,</li> </ol> </li> <li>&gt; Advanced real-time image processing on all sensors</li> <li>&gt; Default paint color: Black, Semi-gloss (other color options available)</li> </ul> <p>Standard Accessories:</p> <ul style="list-style-type: none"> <li>&gt; Hand Controller Unit (HCU), backlit, NVG compatible, with 1.8m (6') cord, bracket and shipping case</li> <li>&gt; Transit Case</li> <li>&gt; Operator manual</li> <li>&gt; 60 day eLearning demo licence for our Operation and Organizational Maintenance Course</li> </ul> <p>*Note: Matching cables or connector kits are separately priced items. Due to connector lead-time it is recommended that Connector kit CONN-MX10 be purchased at time of order</p>	\$262,600	\$262,600
1	DES-MX10	<p>Dessicant Assembly, Rear Door (Qty 4)</p> <ul style="list-style-type: none"> <li>&gt; Not applicable for MX-10MS</li> </ul>	NC	N/C
1	EOW-LLC-MX10	Lowlight Imager, Monochromatic, Near-IR Sensitivity	\$19,500	\$19,500
1	HDIR-MX10	<p>Thermal Imager, Cooled Mid-Wave IR (MWIR)</p> <ul style="list-style-type: none"> <li>&gt; HD MWIR imager, 1280 x 720 Pixel</li> </ul> <p>*Note: Upgrade for SD thermal imager</p>	\$49,920	\$49,920
1	EON-MX10	<p>Electro Optic Narrow Daylight Spotter</p> <ul style="list-style-type: none"> <li>&gt; High sensitivity HD daylight color imager, 1920 x 1080 pixel</li> <li>&gt; High magnification spotter, improves DRI range performance</li> </ul> <p>*Note: Not Available with MX-10D, MX-10DR</p>	\$39,000	\$39,000
OPT	AVT-MX10	<p>Advanced Video Tracker (AVT)</p> <ul style="list-style-type: none"> <li>&gt; Functions on any imaging sensor video</li> </ul>	\$26,520	Option
1	GEO-GPS-MX10	<p>MX-GEO with Internal GPS</p> <ul style="list-style-type: none"> <li>&gt; Geo-referenced target location</li> <li>&gt; Enables Auto and Auto-Aid steering modes</li> <li>&gt; Enables GeoPointing, GeoLocation, and GeoFocus</li> <li>&gt; Includes embedded GPS receiver and antenna</li> <li>&gt; Enhanced GPS inertial (EGI) functionality for superior target location accuracy</li> </ul> <p>*Note: For MX-10MS</p> <ul style="list-style-type: none"> <li>&gt; De-icer option requires platform supplied GPS and compass data</li> <li>&gt; LRF is also required</li> </ul>	\$15,600	\$15,600
1	RCS-MX10	<p>Remote Control Subsystem (RCS) Interface</p> <ul style="list-style-type: none"> <li>&gt; Control turret by a host computer / mission system</li> <li>&gt; Supported on one of RS-422, Ethernet, or MIL-STD-1553b port</li> </ul> <p>NOTE: The Product configuration line items above embedded into the MX Gimbal and are individually selectable depending upon your application. To simplify Purchase Order placement, please use the Net Unit Price shown at the bottom of this section, when ordering the Wescam MX-Product, with all of these configuration items noted as "included".</p>	\$7,410	\$7,410
<b>MX-10 WESCAM MX™-10 As Configured Above</b>			<b>\$394,030</b>	





<u>Qty</u>	<u>Model or Part No.</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
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### Ancillary Items and Cable Kits

Spare Line				
1	MX-HCU	Hand Controller Unit (HCU), backlit, NVG compatible, with 1.8m (6') cable	\$9,048	\$9,048
1	HCU-BKT	Bracket for Hand Controller Unit	\$800	\$800
			<b>Subtotal</b>	<b>\$9,848</b>

### Shipping

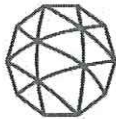
1	SHIP-D-MX-10	Domestic Shipping	\$1,200	\$1,200
			<b>Subtotal</b>	<b>\$1,200</b>

<b>Total Bid (excluding options):</b>	<b>\$405,078</b>
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<b>Special 1x Project Discount:</b>	<b>(\$20,254)</b>
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*1X Discount only applicable to configuration as quoted above.*

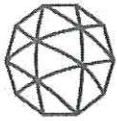
<b>Total Bid with 1x Discount (excluding options):</b>	<b>\$384,824</b>
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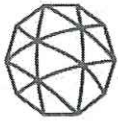
## Wescam USA, Inc. Proposal Specific Terms, Conditions, Notations

- Purchase orders and Contracts are to be made out to Wescam USA, Inc..**
- Wescam USA, Inc., is a wholly owned subsidiary of L3Harris Technologies, Inc.**
1. **Precedence:** These Proposal Specific Terms and Conditions or other referenced Terms and Conditions take precedence.
  2. **COVID-19 Advisement:** L3Harris (Wescam USA, Inc.) has developed and is submitting this proposal during the declared public health emergency period. As this unprecedented situation continues to evolve there potentially may be impacts to the execution of a resultant Contract to this offer. Such impacts could affect the period of performance, pricing, deliveries, provision of services, ability to travel related to corporate and / or governmental restrictions, etc. L3Harris (Wescam USA, Inc.) reserves the right to modify elements of this offer to reflect any known COVID-19 impact, prior to negotiation / award. Our proposal is predicated on inclusion in any resultant Contract of a mutually agreeable Contract modification clause to address impacts from the COVID-19 global pandemic during program execution.
  3. **Currency:** All Prices in United States Dollars (USD).
  4. **Then-Year Pricing:** Reflecting 2022 deliveries. Delivery year is determined by contract date as accepted by Wescam USA, Inc. and agreed to by the Purchaser. Future deliveries may be subject to an annual escalation rate no greater than 2.0% or the annual rate of inflation in the United States of America, whichever is greater.
  5. **Shipping Point:** Delivery terms are CIP (Incoterms 2020) customer location in the United States.  
  
Unless explicit written instructions are supplied by the Purchaser, the method of transportation and the route of shipment shall be at Wescam USA, Inc.'s sole discretion. If the Purchaser delays shipment of any items, Wescam USA, Inc. may invoice the Purchaser for said items and hold them at Purchaser's risk and expense, pending instructions from the Purchaser.
  6. **Offer Validity:** Offer is valid for 180 days. Prices for configured items or services quoted as optional are only valid with initial order.
  7. **Pricing:** Firm Fixed Pricing.
  8. **Installation:** On-site installation support consultation is available from Wescam USA, Inc. and can be quoted upon request.
  9. **Terms and Conditions:** T&C's per Wescam USA Inc. form FM1093 and supplied appendices.
  10. **Colour:** Unless otherwise stated, the standard system colour will be black. Delivery specified below assumes this standard colour. For non-standard colour applications, consult factory for pricing and delivery lead-time.





11. **Delivery:**  
**Prime Equipment:** Approximately 4 to 6 months after effective contract start date.  
Subsequent deliveries to be at a rate of up to one system per month or as otherwise mutually agreed. Depending upon configuration and date of receipt of order, Wescam USA, Inc. may be able to provide an accelerated delivery.
- Consult Wescam USA, Inc. prior to placement of Purchase Order to confirm delivery commitments.
- Note: The products / services covered by this proposal may be controlled for export by Canadian Government or other applicable governments. Therefore, the actual delivery date is contingent upon the timely receipt of End Use Certificate(s) and other export documents required to be provided by the Purchaser in addition to the purchase order to allow Wescam USA, Inc. to apply for all applicable export license(s). If the required export license(s) are not approved, or if approved, are subsequently withdrawn or terminated by the required government authorities, then these actions shall relieve Wescam USA, Inc. of its obligations without liability for any damages or consequential losses. Wescam USA, Inc. reserves the right to confirm delivery lead times quoted if optionally quoted items are selected.
12. **End-User Template and Quoted Delivery:** On submission of the Purchase Order to Wescam USA Inc., the Buyer is requested to provide completed and signed end use documents (templates attached to this offer), including an End Use Statement (EUS), and if applicable a completed and signed DSP-83. Failure to provide the completed EUS and DSP-83 (if applicable) with the Purchase Order may delay the Export license application process and give cause for Wescam USA Inc. to amend the Purchase Order / Contract delivery schedule.
13. **Equipment Warranty Period:** Two (2) years from the date of shipment by the seller or 1,000 hours of operation, whichever occurs first. Reference the warranty provision details in FM1093 Appendix - Product Applicable Terms. Extended warranties if offered are effective after end of base warranty period.
14. **Payment Schedule:**
- Hardware:** 100% On delivery per contracted Incoterms.
- Payment Terms:** Unless payments are scheduled with Purchase Order placement, payments shall be due Net: 30 days, zero discount from issue date of invoice as noted in the payment schedule above.
- Payment Method:** All payments are to be made by wire transfer / Electronic Funds Transfer (EFT) (CAD, EUR, GBP or USD) or Automated Clearing House (ACH) transfer (USD only) to Wescam Inc. Account transfer details will be found on invoices when issued.



# L3HARRIS™

## **Wescam USA, Inc. Business Terms and Conditions FM1093 Rev B**

*This proposal/quotation is an offer to purchase, and any resulting sale, is expressly the terms and conditions set forth below, except where specifically stated within an accompanying proposal or quotation. Any additional or different terms and conditions submitted by the Purchaser are expressly rejected by Wescam USA, Inc. and shall be of no effect nor in any circumstance binding upon Wescam USA, Inc. unless specifically accepted by Wescam USA, Inc. in writing.*

### **1. EFFECTIVE CONTRACT START DATE:**

The effective contract start date is defined as the date when all of the following has occurred:

- a) A formal purchase order is issued by the Purchaser.
- b) Wescam USA, Inc. accepts the technical and commercial content of the Purchase Order.

**2. SUBCONTRACTING:** Wescam USA, Inc. may subcontract such portions of the work as it deems necessary in the performance of this contract.

### **3. SALES AND SIMILAR TAXES:**

The prices quoted in this proposal do not include Excise Taxes, sales or use taxes or any other tax, of any nature, which may be imposed specifically as a result of this transaction. The amount of any tax applicable to this transaction or the use of the equipment involved shall be paid by the Purchaser directly to the appropriate taxing authority or to Wescam USA, Inc. if itemized in the invoice.

### **4. IMPORT DUTY:**

Unless otherwise specified in writing, the quoted prices do not include present or possible future import duties, tariffs, or other similar charges levied by any country and all import formalities and import duties and costs are the Purchaser's responsibility.

### **5. EXPORT CONTROLS:**

If the items proposed are controlled items as defined in the multilateral Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods, they may require approval from the Canadian Government and/or other Governments, as applicable. If requested by Wescam USA, Inc., the Purchaser may be required to provide an end-user certificate/end use statement with the purchase order to allow Wescam USA, Inc. to apply for the export permit/license. Wescam USA, Inc. will apply for any required permits/licenses in a timely manner. Wescam USA, Inc. accepts no responsibility for any delay in shipment due to delays in receipt or approval of such export licenses/certificates. Failure of any government to issue a required export permit/license, or the withdrawal/termination of a required export permit/license by any government will be considered an event of "force majeure" and shall relieve Wescam USA, Inc. of its obligations without any liability.

### **6. INSURANCE:**

Wescam USA, Inc. shall maintain its commercial general liability insurance policies to protect Wescam USA, Inc. legal liability and workmen's compensation protection for Wescam USA, Inc. employees. However, Wescam USA, Inc. shall not accept any contractual liability for indemnity.

### **7. OWNERSHIP OF TECHNICAL DATA, TRAINING MATERIAL AND SOFTWARE:**

The specifications, drawings, manufacturing data and other information transmitted between Wescam USA, Inc. and the Purchaser in connection with Wescam USA, Inc.'s proposal and any resulting contract are the property of the originating party and are disclosed in confidence on the condition that they are not to be reproduced, copied, disclosed to third parties, or used for any purpose detrimental to the interest of the other party, including to reverse engineer, decompile or disassemble any Wescam USA, Inc. products.

### **8. CONFIDENTIALITY:**

Confidential Information shall include trade secrets, proprietary business or technical information and any non-written information disclosed by either Party to the other if the Disclosing Party reduces such information to





writing, conspicuously identifies it as "Confidential" and sends it to the other Party within thirty (30) days of disclosure.

Confidential Information received by one Party from the other party will be kept in confidence by the Receiving Party with the same reasonable degree of care that it normally employs for the protection of its own confidential information.

Confidential Information will not be used or disclosed by the Receiving Party, except to such of its employees and employees of affiliates that have a strict need-to-know.

Each Party shall take any and all appropriate steps to impose the obligations of this Agreement on its employees or employees of affiliates.

The above limitations shall not apply to any portion of the Confidential Information that:

- (a) Was in the public domain at the time of, or prior to, disclosure; or
- (b) Enters into the public domain other than by breach of this Agreement; or
- (c) Was known by the Receiving Party prior to disclosure as evidenced by written records; or
- (d) Was disclosed to the Receiving Party in good faith by a third party not in violation of any obligations of confidentiality to the Disclosing Party; or
- (e) Was independently developed by the Receiving Party as evidenced by written records; or
- (f) Is disclosed to a Government in connection with a proposal or contract if such Confidential Information is identified as information provided by the Disclosing Party and is marked with a suitable legend to protect the Disclosing Party's proprietary interests.

#### **9. ACCEPTANCE:**

Acceptance of the hardware by the Purchaser (including transfer of title) shall occur upon the successful conduct of Wescam Inc.'s standard factory acceptance test plan (new systems) or functional verification tests. The Purchaser may witness the factory acceptance test on a non-interference basis upon reasonable notice being given to Wescam Inc.

Acceptance by the Purchaser of any non-hardware deliverable requiring Purchaser approval shall be deemed to have taken place within 15 days of completion or delivery to the Purchaser, provided that Wescam USA, Inc. has not been notified in writing that the deliverable has been rejected together with the reasons for the rejection.

#### **10. DISCLAIMER OF DAMAGES:**

Neither Wescam USA, Inc. nor Wescam Inc. shall be liable for special, incidental, indirect, or consequential damages, under any circumstances, including, but not limited to, damage or loss resulting from inability to use the equipment, increased operating cost, loss of production, loss of anticipated profits, or special incidental, indirect or consequential damages, whether similar or dissimilar, of any nature arising from any cause whatsoever whether based on breach of contract (fundamental or otherwise), tort (including negligence), offenses, strict liability, or any other theory of law.

#### **11. LIMITATION OF LIABILITY:**

Notwithstanding any other provision of the contract, Wescam USA, Inc. and Wescam Inc. maximum liability thereunder, arising from any cause whatsoever, whether based on breach of Contract (fundamental or otherwise), tort (including negligence), offense, strict liability, or any other theory of law, shall not exceed the contract price. Any suit based upon any aforementioned cause of action must be commenced within one year from the date said action accrues.

#### **12. TECHNICAL SPECIFICATIONS:**

Unless otherwise agreed to, in writing, this proposal provides a general overview of the proposed offer for sale. As part of its ongoing policy of product improvement, Wescam USA, Inc. reserves the right to modify the equipment configuration described to provide improved performance, reliability or maintainability or to substitute components of equivalent or higher performance. Upon Purchaser's request, Wescam USA, Inc. will



provide Purchaser with a qualification summary report identifying the standards to which its products have been qualified. Any qualification standards that are not identified in the qualification summary report are expressly disclaimed by Wescam USA, Inc.

Part numbers of spare parts may change between proposal and delivery. Alternate spare parts will have the same fit, form or function and equivalent or higher performance. Wescam USA, Inc. will notify the Purchaser of superseding spare part numbers prior to delivery.

**13. NONWAIVER:**

If Wescam USA, Inc. or Wescam Inc. does not insist on strict compliance of the Purchaser with any of these Terms and Conditions, or fails to exercise promptly any right occurring from any default of the Purchaser, then the foregoing shall not impair Wescam USA, Inc. or Wescam Inc.'s rights in case of the Purchaser's default continues or in case of any subsequent default by the Purchaser.

**14. GOVERNING LAW:**

The rights and obligations of Wescam USA, Inc. and the Purchaser with respect to this proposal and any resulting contract shall be governed by the laws of the State of New York. Any suits, claims or actions relating to the contract shall be brought in a court of competent jurisdiction in the State of New York and the parties hereby irrevocably attorn to the exclusive jurisdiction of such courts for the purpose of adjudicating any such suit or action. Wescam USA, Inc. and the Purchaser agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply.

**15. EXCUSABLE DELAYS:** Neither Wescam USA, Inc. nor Wescam Inc. shall be liable to the Purchaser for any loss, damage, delay in the work or non-performance of any contractual obligation caused a Force Majeure Event. "Force Majeure Event" means any event or circumstance or combination of events or circumstances that: (i) is beyond the reasonable control of the affected party; (ii) could not have been mitigated, avoided, or prevented through the exercise of reasonable care and precautions; and (iii) materially and adversely affects the performance by such party of all or a part of its obligations under or pursuant to this Contract. Force Majeure Events include but are not limited to:

- a. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, rebellion, riot, insurrection, civil commotion, act or campaign of terrorism, or sabotage;
- b. any government acts or omissions;
- c. radioactive contamination or ionizing radiation;
- d. any strike or labor dispute;
- e. labor or material shortages that could not have been reasonably foreseen;
- f. any Changes in Law, including changes in tax laws;
- g. any Customer failure, whether through act or omission, to perform any of its obligations under the Contract;
- h. any lightning, earthquake, hurricane, drought, tsunami, monsoon, tempest, flood, storm, cyclone, volcano, mudslide, typhoon, tornado or other unusually severe weather or act of nature;
- i. fire, explosion or chemical contamination;
- j. any epidemic, blight, famine, quarantine, plague, or pandemic including but not limited to COVID-19;
- k. any transportation accidents;
- l. suspension of flight operations due to inclement weather;
- m. delays of suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Seller and its supplier.

For the avoidance of doubt, Customer shall not be relieved of its obligation to make timely payment to Seller under this purchase order by reason of Force Majeure Events.

The affected party shall give the other party timely notice after it becomes aware of any Force Majeure Event, which notice shall, to the extent practicable, specify the length of the delay anticipated or occasioned by, and additional costs, if any, incurred or anticipated to be incurred by reason of such Force Majeure Event. Customer shall within ten (10) days following delivery of such notice (whether to or from Seller), or such other period as may be agreed between the parties, issue a Change Order equitably adjusting the Contract Price, Schedule and other terms and conditions of the Contract in accordance with Article [ref: Changes clause] hereof. The affected party shall use reasonable efforts to minimize the delay and cost caused by the Force





Majeure Event, but Seller shall not be required to subcontract Work or to work additional hours unless Customer agrees to pay all additional costs with respect thereto.

During any period of suspension of the Work due to a Force Majeure Event, Seller shall take such reasonable steps (in light of the nature of the Force Majeure Event) as necessary to protect and preserve the Work completed and which will permit efficient resumption of the Work when reinstated. The cost of these necessary protective steps shall be to the Customer's account and shall be set out in a Change Order in accordance with Article 18. In addition, Seller and the Customer shall mutually agree upon the extent to which Seller's and its Subcontractors' personnel, equipment and other temporary facilities (including provision for emergency services) shall be retained on the Program, at Seller's facility and at its Subcontractors' facilities, during such suspension in order to minimize expenses during such period, and Customer shall pay the amount agreed upon to Seller for such expenses during the period of suspension.

Seller shall promptly resume the portion of the Work suspended due to a Force Majeure Event upon mutual agreement among the parties that such Force Majeure Event is over and upon delivery of a written notice from Customer to Seller authorizing reinstatement of such portion, specifying the effective date of resumption and acknowledging the entitlement of Seller to a Change Order pursuant to Article 18.

**16. PROHIBITED USES:**

The Purchaser may not, in any way:

- a) Modify the product, except as permitted in the normal use of the product.
- b) Reverse-engineer, disassemble, or make any attempt to copy the product.
- c) Transfer the product to any person or entity in violation of any applicable Export regulations.

**17. ENTIRE AGREEMENT:**

This Agreement, together with ancillary agreements, contains the entire agreement between Wescam USA, Inc. and the Purchaser, and no provisions may be waived, modified, or altered except by writing executed by both parties.

**18. CHANGES:**

The Purchaser may propose changes to the work within the general scope of the contract. Wescam USA, Inc. shall be under no obligation to implement any proposed change unless Wescam USA, Inc. and the Purchaser agree in writing to any resulting adjustment in the contract price, delivery schedule or other provisions of the contract.

**19. ASSIGNMENT:**

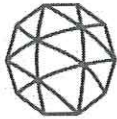
Purchaser shall not assign this contract, in whole or in part, to other than wholly-owned subsidiaries without the prior written consent of Wescam USA, Inc.. Wescam USA, Inc. may assign this contract in the event of a merger, consolidation or reorganization or with a sale of all or substantially all of the assets of the business of Wescam USA, Inc. to which this contract relates.

**20. OFFSET:**

Wescam USA, Inc. has entered into this agreement under the cognizance of L3Harris Technologies, Inc. Offset programs. Unless otherwise stated, all Offset credits resulting from this agreement are the sole property of L3Harris Technologies, Inc. to be applied to the Offset program of its choice.

**21. GOVERNMENT INTERACTION:**

Each Party agrees not to interact with the end customer, any government, political party or public international organization, on behalf of the other Party without prior written approval. Neither Party is authorized to assume or create any obligation, liability nor responsibility, express or implied, bill for goods, make any commitments or representations, or otherwise act in any other manner, on behalf of or in the name of the other Party or to bind the other Party in any manner. Both Parties acknowledge and agree that the relationship intended by this Agreement is that of independent contractors.



# L3HARRIS™

## Wescam USA, Inc. Business Terms and Conditions Product Applicable Terms FM1093P Rev B

### 1. WARRANTY

Wescam USA, Inc. warrants, to the original Purchaser only, that the product is free from defects in material and workmanship. Wescam USA, Inc. will repair or replace (at its option) any such device that is returned FCA Incoterms 2010 to the Wescam USA, Inc. repair facility, with transportation charges prepaid and within the warranty period. The liability of Wescam USA, Inc. shall be limited to the repair or replacement of the device and shall not include installation, or any other charge or expense incurred. Wescam USA, Inc. will pay for return freight to Purchaser's port of entry. This warranty shall not apply to any unit or part thereof that, in the opinion of Wescam USA, Inc., has been installed or used improperly; damaged by accident, misuse, or negligence; or altered or repaired in such a manner as to impair performance. Wescam USA, Inc. shall have the right of final determination as to the existence and cause of any such defect.

**Exclusion of Warranty** - The warranties provided in this section are in lieu of all other warranties, express, implied or statutory, including but not limited to the implied warranties of merchantability of fitness for a particular purpose.

### 2. INSTRUCTION MANUALS:

Installation and instruction Manuals, written in English, will be supplied in reasonable quantities with equipment purchases, unless otherwise specified.

**3. GPS RCS Interface** – Price and delivery is based on Purchaser supplying Wescam USA, Inc. with the GPS interface protocol at time of order. Hardware (INS, Radar, etc.) to be supplied to Wescam USA, Inc. 60 days prior to delivery of system. The Purchaser supplied GPS / protocol must be compatible with the offered MX system.

### 4. NESL INDEMNITY

If the Equipment quoted in this proposal/contract includes a non-eye safe laser (NESL), the Purchaser agrees for as long as it operates the equipment, to indemnify and save Wescam USA, Inc. and Wescam Inc. harmless from any and all liabilities, losses, suits, claims, demands, costs and actions of any kind or nature whatsoever to which Wescam USA, Inc. and Wescam Inc. shall or may become liable for as a result of purchaser's use of the NESL.

**5. Laser Cutouts** – If applicable, the Purchaser shall provide laser cut out angles at time of contract award. Any delays in providing laser cut out information may impact delivery dates.

### 6. MICROWAVE EQUIPMENT

**Microwave Frequencies and Range** – The operating band and the maximum number of channels of the microwave equipment shall be in accordance with the corresponding Wescam USA, Inc. quotation / specification. Wescam USA, Inc. will do its best to accommodate any operating band change requests made thereafter, however, there will be a restocking charge for the microwave equipment and Wescam USA, Inc. reserves the right to adjust the price and delivery schedule accordingly. Unless otherwise agreed, the Purchaser is responsible to obtain all necessary licenses required to install and operate the microwave equipment. Range performance is dependent upon a number of variables and can only be ascertained through a site survey.