

313573

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To:

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**MERGER OR SHARE EXCHANGE  
ORION MARINE CONSTRUCTION, INC.**

Certificate of Status	0
Certified Copy	0
Page Count	15
Estimated Charge	\$212.50

T. CLINE  
DEC 16 2011

\$248.00 EXAMINER

**COVER LETTER**

**TO:** Registration Section  
Division of Corporations

**SUBJECT:** Orion Marine Construction, Inc.  
Name of Surviving Party

Please return all correspondence concerning this matter to:

Michelle Perry

Contact Person

Orion Marine Construction, Inc.

Firm/Company

12000 Aerospace Ave, Suite 300

Address

Houston, TX 77034

City, State and Zip Code

mperry@orionmarinegroup.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Michelle Perry

Name of Contact Person

at (

713)

852-6532

Area Code and Daytime Telephone Number

☒ Certified Copy (optional) \$8.75

**STREET ADDRESS:**

Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**MAILING ADDRESS:**

Registration Section  
Division of Corporations  
P. O. Box 6327  
Tallahassee, FL 32314

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**Articles of Merger  
For  
Florida Profit or Non-Profit Corporation**

The following Articles of Merger are submitted to merge the following Florida Profit and/or Non-Profit Corporation(s) in accordance with s. 607.1109 or 617.0302, Florida Statutes.

**FIRST:** The exact name, form/entity type, and jurisdiction for each merging party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
KFMSGP, LLC <i>MU6-973</i>	Texas	Limited liability company
KFMSLP, LLC	Nevada	Limited liability company
King Fisher Marine Service, LP <i>BO6-81</i>	Texas	Limited partnership
Orion Dredging Services, LLC <i>LO8-1481</i>	Florida	Limited liability company
Seagull Services, LLC	Delaware	Limited liability company
T LaQuay Dredging, LLC	Texas	Limited liability company

**SECOND:** The exact name, form/entity type, and jurisdiction of the surviving party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
Orion Marine Construction, Inc.	Florida	Corporation

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**THIRD:** The attached plan of merger was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with the applicable provisions of Chapters 607, 608, 617, and/or 620, Florida Statutes.

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**FOURTH:** The attached plan of merger was approved by each other business entity that is a party to the merger in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

**FIFTH:** If other than the date of filing, the effective date of the merger, which cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State:

December 31, 2011 at 11:59 PM

**SIXTH:** If the surviving party is not formed, organized or incorporated under the laws of Florida, the survivor's principal office address in its home state, country or jurisdiction is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SEVENTH:** If the surviving party is an out-of-state entity, the surviving entity:

a.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation that is party to the merger.

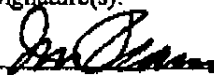



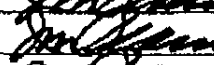

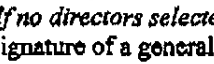
b.) Agrees to promptly pay the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under s. 607.1302, F.S.

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TALLAHASSEE, FLORIDA

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**EIGHTH:** Signature(s) for Each Party:

Name of Entity/Organization:	Signature(s):	Typed or Printed Name of Individual:
KFMSGP, LLC		J. Michael Pearson, President of KFMSLP, LLC; its Member
KFMSLP, LLC		J. Michael Pearson, President of Orion Construction, LP; its Member
King Fisher Marine Service, LP		J. Michael Pearson, Chairman of KFMSGP, LLC; its General Partner
Orion Dredging Services, LLC		J. Michael Pearson, President of Orion Marine Group, Inc.; its Member
Seagull Services, LLC		J. Michael Pearson, President of Orion Marine Group, Inc.; its Member
T LaQuay Dredging, LLC		J. Michael Pearson, President of Seagull Services, LLC; its member
Orion Marine Construction, Inc. Corporations:		J. Michael Pearson, Chairman & CEO Chairman, Vice Chairman, President or Officer (If no directors selected, signature of incorporator.)
General Partnerships:		Signature of a general partner or authorized person
Florida Limited Partnerships:		Signatures of all general partners
Non-Florida Limited Partnerships:		Signature of a general partner
Limited Liability Companies:		Signature of a member or authorized representative

**Fees:**

\$35.00 Per Party

**Certified Copy (optional):**

\$8.75

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**FINAL**  
**December 14, 2011**

**AGREEMENT AND PLAN OF MERGER**

By and Between

**KFMSGP, LLC**  
**KFMSLP, LLC**  
**KING FISHER MARINE SERVICE LP**  
**ORION DREDGING SERVICES, LLC**  
**SEAGULL SERVICES, LLC**  
**T. LAQUAY DREDGING, LLC**

With and Into

**ORION MARINE CONSTRUCTION, INC.**

Approved and Consented to By

**ORION MARINE GROUP, INC.**  
And  
**ORION CONSTRUCTION, LP**

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**TALLAHASSEE, FLORIDA**

Effective as of **December 31, 2011**

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### AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger ("Agreement") is made and entered into effective as of December 31, 2011, by and among, the following:

- **KFMSGP, LLC** (hereinafter "**KFMSGP**"), a Texas limited liability company and owner of 1% general partnership interest in King Fisher Marine Service LP;
- **KFMSP, LLC**, (hereinafter "**KFMSP**") a Nevada limited liability company (hereinafter "**KFMSP**") and owner of a 99% limited partnership interest in King Fisher Marine Service LP and a 100% membership interest in KFMSGP, respectively;
- **King Fisher Marine Service LP** (hereinafter "**KFMS**"), a Texas limited partnership, acting through its general partner, KFMSGP;
- **Orion Dredging Services, LLC** (hereinafter "**ODS**"), a Florida limited liability company;
- **Seagull Services, LLC** (hereinafter "**Seagull**"), a Delaware limited liability company and the owner of a 100% membership interest in T. LaQuay Dredging, LLC;
- **T. LaQuay Dredging, LLC** (hereinafter "**LaQuay**"), a Texas limited liability company;

(Collectively, the above are hereinafter referred to as the "Merging Companies")

#### With and Into:

- **Orion Marine Construction, Inc.** (hereinafter "**OMC**"), a Florida corporation

#### And with the hereinafter granted consent and approval of:

- **Orion Marine Group, Inc.** (hereinafter "**Ultimate Parent Company**"), a Delaware corporation and ultimate parent company of each and every one of the above identified companies;
- **Orion Construction, LP** (hereinafter "**OCLP**"), a Texas limited partnership acting through its general partner, OCGP, LLC (a Texas limited liability company and hereinafter "**OCGP**") and the holder of 100% of the issued and outstanding shares of OMC and sole member of (owner of 100% membership interest in) KFMSP, LLC;

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### RECITALS

**WHEREAS**, the boards of directors of the Ultimate Parent Company and OMC (i) have determined that the combination of OMC and the Merging Companies (by merging the Merging Companies with and into OMC) is in the best interests of each corporation and its respective stockholders and (ii) have adopted this Agreement; and

**WHEREAS**, OCLP (through its general partner, OCGP, LLC) (i) has determined that the combination of OMC and the Merging Companies (by merging the Merging Companies with and into OMC) is in the best interests of the partnership and its partners and (ii) have adopted this Agreement; and

**WHEREAS**, the managers and members of KFMSGP, KFMSLP, ODS, Seagull and LaQuay (i) have determined that the combination of OMC and the Merging Companies (by merging the Merging Companies with and into OMC) is in the best interests of each limited liability company and its respective member(s) and (ii) have adopted this Agreement; and

**WHEREAS**, KFMS (through its general and limited partners, KFMSGP and KFMSLP, respectively) (i) has determined that the combination of OMC and the Merging Companies (by merging the Merging Companies with and into OMC) is in the best interests of the partnership and its partners and (ii) have adopted this Agreement; and

**WHEREAS**, the Ultimate Parent Company, the Merging Companies, OCLP and OMC (each individually, a "Party" and collectively, the "Parties") desire to make certain representations, warranties and agreements as set forth below.

**NOW, THEREFORE**, in consideration of these premises and the mutual and dependent covenants, agreements, provisions and promises hereinafter contained do hereby prescribe the terms and conditions of said merger and mode of carrying the same into effect as follows:

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## **ARTICLE 1**

### **THE MERGER**

Upon the terms and subject to the conditions hereof, and in accordance with the provisions of the Limited Liability Company Act of the State of Delaware, the Texas Business Organizations Code, the Florida Statutes Annotated, Chapters 607 and 608 and the Nevada Revised Statutes, Chapters 86 and 92A (collectively the "Applicable Business Codes") at 11:59 p.m., central time, on December 31, 2011 (the "Effective Time"), the Merging Companies shall be merged with and into OMC (the "Merger"), whereupon the separate existence of Merging Companies shall cease to exist as separate legal entities, and the corporate existence of OMC, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger, except as set forth herein. The Merger shall have the effects set forth in this Agreement and in the Applicable Business Codes. OMC, in its capacity as the entity surviving the Merger, is hereinafter sometimes referred to as the "Surviving Corporation."

## **ARTICLE 2**

### **SURVIVING ARTICLES OF INCORPORATION**

The Articles of Incorporation of OMC, as in effect on the date of this Agreement and as of the Effective Time, shall continue in full force and effect as the Articles of Incorporation of the company surviving this merger.

## **ARTICLE 3**

### **CONVERSION OF OWNERSHIP INTERESTS**

The manner of converting the outstanding partnership interests and membership interests in the Merging Companies shall be as follows:

Each partnership interest and membership interest of the Merging Companies which shall be outstanding at the Effective Time and all rights in respect thereof shall forthwith be cancelled.

## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

4.1 **Organization.** Each Party, respectively, represents and warrants to each of the other Parties, as follows:

- The Ultimate Parent Company is a Delaware corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and the ultimate parent company (the direct or indirect wholly owned owner of all) of the Merging Companies, OMC, OCLP and OCGP.
- OMC is a Florida corporation duly organized, validly existing, and in good standing under the laws of the State of Florida.

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- OCLP is a Texas limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas and the holder of 100% of the issued and outstanding shares of OMC and sole member of (owner of 100% membership interest in) KFMSLP.
- KFMSGP is a Texas limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas and it is the owner of 1% membership interest in KFMS.
- KFMSLP is a Nevada limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and it is the owner of 99% and 100% membership interests in KFMS and KFMSGP, respectively.
- KFMS is a Texas limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas.
- ODS is a Florida limited liability duly organized, validly existing and in good standing under the laws of the State of Florida.
- Seagull is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and it is the sole member of (owner of 100% membership interest in) LaQuay.
- LaQuay is a Texas limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas.

4.2 **Authority.** Each of the Parties has all requisite power and authority to (a) execute, deliver and perform its obligations under this Agreement and (b) execute, deliver and perform its obligations under all other agreements and instruments to be executed and delivered pursuant to or in connection with this Agreement.

4.3 **Enforceability.** This Agreement has been duly authorized by all requisite action, and constitutes the valid and binding obligation of each of the Parties, enforceable against each of them in accordance with its terms, and any and all documents, agreements and instruments to be executed and delivered by any of them pursuant to this Agreement will be executed by a duly authorized officer, member, manager, partner or other authorized person of each and this Agreement and each such other above referenced document, agreement and instrument will constitute a valid and binding obligation, enforceable against it in accordance with its terms, in each case, except as such enforceability may be limited by bankruptcy, insolvency, reorganization and similar laws affecting creditors' rights generally and by general equitable principles. The boards of directors of the Ultimate Parent Company and OMC and the sole stockholder of OMC have approved the execution, delivery and performance of this Agreement and all other agreements and instruments contemplated hereby to which each is a party and the consummation of the Merger, in each case, in accordance with the Applicable Business Codes. The respective managers, member, and partners of the Merging Companies

have approved the execution, delivery and performance of this Agreement and all other agreements and instruments contemplated hereby to which each is a party and the consummation of the Merger, in each case, in accordance with the Applicable Business Codes.

4.4 No Breach or Conflict. Each of the Parties' execution and delivery of this Agreement, and the performance of their respective obligations under this Agreement and each of the other documents, agreements and instruments to be or which may be executed and delivered pursuant hereto or thereto, the performance by each such Party of its obligations hereunder and there under and the consummation of the transactions contemplated hereby and thereby, and compliance by each Party with the terms and provisions hereof, do not and will not (a) violate any Law, (b) conflict with or result in any violation of the articles of incorporation, articles of organization, operating agreement or other organizational documents, or (c) violate, conflict with, require the consent or waiver of any Person under any contract to which such Party or any of its subsidiaries is a party or by which any of them is bound.

4.5 No Other Representations or Warranties. Each Party acknowledges and agrees that the representations and warranties of each contained in this Article 4 are the sole and exclusive representations and warranties of each in connection with the transactions contemplated by this Agreement and that none of them, none of their subsidiaries, nor any of their respective current or former officers, directors, employees, partners, managers, members, stockholders, option holders, financial advisors, consultants, agents or representatives makes or has made any other express or implied representation or warranty regarding any Party or any of its subsidiaries or their respective businesses.

## ARTICLE 5

### TERMS AND CONDITIONS OF MERGER

The terms and conditions of the merger are as follows:

5.1 Surviving Organizational Documents. The articles of incorporation and by-laws of OMC as they shall exist at the Effective Time shall be and remain the by-laws of the surviving corporation until the same shall be altered, amended or repealed as therein provided.

5.2 Surviving Officers and Directors. The directors and officers of OMC shall continue in office until the next annual meeting of stockholders and until their successors shall have been elected and qualified.

5.3 Effectiveness. This merger shall become effective at the Effective Time, as defined in Article 1.

5.4 Assets of the Merging Companies. Upon the merger becoming effective, all the property, rights, privileges, franchises, patents, trademarks, licenses, registrations, stock certificates, membership interests, partnership interests and other assets of every kind, nature and description of the Merging Companies shall be transferred to, vested in and devolve upon OMC without further act or deed and all property, rights, and every other interest of OMC and the Merging Companies shall be as effectively the property of OMC as they were of OMC and the Merging Companies, respectively. The Merging Companies hereby agree from time to time, and

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and when requested by OMC by its successors or assigns, to execute and deliver or cause to be executed and delivered all such deeds and instruments and to take or cause to be taken such further or other action as OMC may deem necessary or desirable in order to vest in and confirm to OMC title to and possession of any property of the Merging Companies acquired or to be acquired by reason of or as a result of the merger herein provided for and otherwise to carry out the intent and purposes hereof and the proper members managers and partners of the Merging Companies and the proper officers and directors of OMC are fully authorized to take any and all such action.

## **ARTICLE 6**

### **MISCELLANEOUS**

**6.1 Entire Agreement.** This Agreement and any other written agreement entered into on or after the date hereof in connection with the transactions contemplated hereby and thereby embody the entire agreement and understanding among the Parties and supersede all prior understandings related to the subject matter hereof. There are no representations, warranties, promises or agreements on the part of any Party to any other Party except as expressly set forth herein and in any other such written agreements entered into on or after the date hereof in connection with the transactions contemplated hereby and thereby.

**6.2 No Waiver; Modifications in Writing.** No amendment, waiver, consent, modification or termination of any provision of this Agreement shall be effective unless executed in writing by each Party to be bound thereby. Any amendment, supplement or modification of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure by any Party from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given.

**6.3 Communications.** Any notice, document, request, instruction, consent, correspondence or other advice to be given hereunder by any Party to any other (herein collectively called "Notice") can be orally or in writing to the Secretary of each such Party at the last known corporate headquarters of such Party.

**6.4 No Consequential Damages.** Except for Third-Party Claims, in no event will any Party be liable to any other Party for any punitive, exemplary, indirect, special, incidental or consequential damages, including lost profits or savings, damage to business reputation or loss of opportunity.

**6.5 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile copies of signatures shall constitute original signatures for all purposes of this Agreement and any enforcement hereof.

**6.6 Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective permitted successors and assigns. Except as expressly provided in this Agreement, this Agreement shall not be construed so as to confer any right or benefit upon any Person other than the Parties to this Agreement (and such benefits shall in the case of the Ultimate Parent Company be limited to it in its capacity as

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Ultimate Parent Company), and their respective permitted successors and assigns. Except as set forth herein, no Party may assign its rights and obligations under this Agreement to any other Person without the prior written consent of the other Parties, and any such attempted assignment without such consent shall be void.

**6.7 Governing Law.** The provisions of this Agreement and the documents delivered pursuant hereto shall be governed by and construed and enforced in accordance with the laws of the State of Texas (without regard to any conflicts-of-law rule or principle that would require the application of same to the laws of another jurisdiction).

**6.8 Waiver of Jury Trial; Submission to Jurisdiction.**

**6.8.1** EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING HEREUNDER.

**6.8.2** The Parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of any Federal or state court located within the State of Texas over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action proceeding related thereto may be heard and determined in such courts. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**6.9 Severability of Provisions.** Any provision of this Agreement that is invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating the remaining provisions hereof or affecting or impairing the validity or enforceability of such provision in any other jurisdiction.

**6.10 Specific Performance.** Each Party acknowledges and agrees that the breach of this Agreement would cause irreparable damage to each such Party and that Party may not have an adequate remedy at law. Therefore, the obligations of each such Party under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or otherwise.

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6.11 **Headings.** The Article, Section and other headings and captions and Table of Contents used or contained in this Agreement or the schedules, exhibits or annexes hereto are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. The exhibits, schedules and annexes referred to herein are attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties to this Agreement have caused these presents to be executed by the President, Vice President, manager, member, partner or other authorized official and attested by the Secretary of each Party thereto as the respective act, deed and agreement of each of said Party, on this the 14<sup>th</sup> day of December, 2011.

ATTEST:

BY:

Peter R. Buchler, Secretary

ORION MARINE GROUP, INC.,  
a Delaware corporation

BY:

J. Michael Pearson,  
President and CEO

ATTEST:

BY:

Peter R. Buchler, Secretary

ORION MARINE CONSTRUCTION, INC.,  
a Florida corporation

BY:

J. Michael Pearson,  
Chairman and CEO

ATTEST:

BY:

Peter R. Buchler, Secretary

ORION CONSTRUCTION, LP,  
a Texas limited partnership

BY:

J. Michael Pearson, Sole Manager of the  
General Partner, OCGP, LLC

ATTEST:

BY:

Peter R. Buchler, Secretary

KFMSGP, LLC,  
a Texas limited liability company

BY:

J. Michael Pearson, Sole Manager

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TALLAHASSEE, FLORIDA

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ATTEST:

BY:

  
Peter R. Buchler, Secretary


**KFMSLP, LLC,**  
a Nevada limited liability company

BY:

  
J. Michael Pearson, as President of Orion  
Construction, LP, its Sole Member


ATTEST:

BY:

  
Peter R. Buchler, Secretary

**KING FISHER MARINE SERVICE, LP,**  
a Texas limited partnership

BY:

  
J. Michael Pearson, Sole Manager of the  
General Partner, KFMSGP, LLC


ATTEST:

BY:

  
Peter R. Buchler, Secretary


**ORION DREDGING SERVICES, LLC,**  
a Florida limited liability company

BY:

  
J. Michael Pearson,  
General Executive Manager

ATTEST:

BY:

  
Peter R. Buchler, Secretary

**SEAGULL SERVICES, LLC,**  
a Delaware limited liability company

BY:

  
J. Michael Pearson, Sole Manager

ATTEST:

BY:

  
Peter R. Buchler, Secretary

**T. LAQUAY DREDGING, LLC,**  
a Texas limited liability company

BY:

  
J. Michael Pearson, Sole Manager

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