SE-355
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that *(Insert full name or legal title and address of Contractor)*

Name: _____

Address: _____

_____

hereinafter referred to as "Contractor", and *(Insert full name and address of principal place of business of Surety)*

Name: _____

Address: _____

_____

hereinafter called the "surety", are jointly and severally held and firmly bound unto *(Insert full name and address of Agency)*

Name: Midlands Technical College

Address: 1260 Lexington Dr

West Columbia, SC 29170

hereinafter referred to as "Agency", or its successors or assigns, the sum of _____ ($_____), being the sum of the Bond to which payment to be well and truly made, the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____ entered into a contract with Agency to construct

State Project Name: MTC - Reed Hall Restroom Renovations - Airport Campus

State Project Number: H59-N131-CL

Brief Description of Awarded Work: _____

in accordance with Drawings and Specifications prepared by *(Insert full name and address of A/E)*

Name: Design Initiative Group, LLC

Address: 6455 Helena Rd.

Columbia, SC 29206

which agreement is by reference made a part hereof, and is hereinafter referred to as the Contract.

IN WITNESS WHEREOF, Surety and Contractor, intending to be legally bound hereby, subject to the terms stated herein, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this _____ day of _____, 2_____
(shall be no earlier than Date of Contract)

BOND NUMBER _____

CONTRACTOR

By: _____ **(Seal)**

Print Name: _____

Print Title: _____

Witness: _____

SURETY

By: _____ **(Seal)**

Print Name: _____

Print Title: _____
(Attach Power of Attorney)

Witness: _____

(Additional Signatures, if any, appear on attached page)

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NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Agency for the full and faithful performance of the contract, which is incorporated herein by reference.

2. If the Contractor performs the contract, the Surety and the Contractor have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. The Surety's obligation under this Bond shall arise after:

3.1 The Agency has notified the Contractor and the Surety at the address described in paragraph 10 below, that the Agency is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If the Agency, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the Agency's right, if any, subsequently to declare a Contractor Default; or

3.2 The Agency has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract.

4. The Surety shall, within 15 days after receipt of notice of the Agency's declaration of a Contractor Default, and at the Surety's sole expense, take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Agency, to perform and complete the Contract; or

4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Agency for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Agency and the contractor selected with the Agency's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the Agency the amount of damages as described in paragraph 7 in excess of the Balance of the Contract Sum incurred by the Agency resulting from the Contractor Default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and:

4.4.1 After investigation, determine the amount for which it may be liable to the Agency and, within 60 days of waiving its rights under this paragraph, tender payment thereof to the Agency; or

4.4.2 Deny liability in whole or in part and notify the Agency, citing the reasons therefore.

5. Provided Surety has proceeded under paragraphs 4.1, 4.2, or 4.3, the Agency shall pay the Balance of the Contract Sum to either:

5.1 Surety in accordance with the terms of the Contract; or

5.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

5.3 The balance of the Contract Sum due either the Surety or another contractor shall be reduced by the amount of damages as described in paragraph 7.

6. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond 15 days after receipt of written notice from the Agency to the Surety demanding that the Surety perform its obligations under this Bond, and the Agency shall be entitled to enforce any remedy available to the Agency.

6.1 If the Surety proceeds as provided in paragraph 4.4 and the Agency refuses the payment tendered or the Surety has denied liability, in whole or in part, then without further notice the Agency shall be entitled to enforce any remedy available to the Agency.

6.2 Any dispute, suit, action or proceeding arising out of or relating to this Bond shall be governed by the Dispute Resolution process defined in the Contract Documents and the laws of the State of South Carolina.

7. After the Agency has terminated the Contractor's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Agency shall be those of the Contractor under the Contract, and the responsibilities of the Agency to the Surety shall those of the Agency under the Contract. To a limit of the amount of this Bond, but subject to commitment by the Agency of the Balance of the Contract Sum to mitigation of costs and damages on the Contract, the Surety is obligated to the Agency without duplication for:

7.1 The responsibilities of the Contractor for correction of defective Work and completion of the Contract; and

7.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

7.3 Damages awarded pursuant to the Dispute Resolution Provisions of the Contract. Surety may join in any Dispute Resolution proceeding brought under the Contract and shall be bound by the results thereof; and

7.4 Liquidated Damages, or if no Liquidated Damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. The Surety shall not be liable to the Agency or others for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Contract Sum shall not be reduced or set-off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Agency or its heirs, executors, administrators, or successors.

9. The Surety hereby waives notice of any change, including changes of time, to the contract or to related subcontracts, purchase orders and other obligations.

10. Notice to the Surety, the Agency or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. Definitions

11.1 Balance of the Contract Sum: The total amount payable by the Agency to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts to be received by the Agency in settlement of insurance or other Claims for damages to which the Contractor si entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.

11.2 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform the Contract or otherwise to comply with the terms of the Contract.