

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0754**

Ames Construction Inc.,
Appellant,

vs.

City of Moorhead,
Respondent.

**Filed March 30, 2026
Affirmed
Worke, Judge**

Clay County District Court
File No. 14-CV-23-3834

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Considered and decided by Worke, Presiding Judge; Ross, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the district court's summary-judgment decision, arguing that respondent city is liable because it provided an inaccurate geotechnical report when advertising the project for bids. Respondent asserts the plain language of the contract is determinative and the bid solicitation was not part of the contract documents and, as such, is not liable. We affirm.

FACTS

The undisputed evidence, derived from the district court's summary-judgment record, shows the following. In 2002, respondent City of Moorhead began preliminary work and environmental assessments for a construction project that would allow streets to pass under new railroad bridges utilized by railroad companies. SRF Consulting Group Inc. was retained by the city to prepare plans and specifications for the project. SRF subcontracted with Braun Intertec Corporation for a geotechnical evaluation. Braun completed the geotechnical evaluation and provided a report (the Braun report) in 2008.¹ By 2009, the city completed most of the project plans.

After the plans were completed, the project was put on hold until 2018 due to a lack of funding. In March of 2018, the city received sufficient funding and opened the project for public bidding. Information was made available to bidders in a "bid packet," including the contract documents, attachments, bidder requirements, and the bidding timeline. The

¹ The Braun report was a 283-page geotechnical engineering report assessing the soil conditions at the project site.

Braun report was included as an attachment labeled “Geotechnical Report.” Appellant Ames Construction Inc. submitted a proposal and was awarded the project.

SRF designed permanent portions of the project, but Ames was responsible for designing any temporary earth-retention systems. Ames subcontracted with an engineering firm for the design of temporary retention systems. The engineering firm used the Braun report when designing the temporary systems for Ames’ construction plans.

The temporary retention systems experienced soil movement and slope failures, which delayed and increased project costs. From 2018 to 2020, these issues were prevalent. Following the failures, the railroad company required that Ames’ plans be revised and resubmitted for approval before further excavation.

The project was halted to accommodate further soil-condition investigations. Ames engaged another engineering firm to conduct those investigations, alleging that Braun’s geotechnical report was inaccurate. The firm issued findings showing the project’s structures required redesign and a new submittal review process was created. Because of the failures, required redesigns, and changes to processes, Ames had to delay the project’s anticipated completion date. Ames incurred additional costs totaling approximately \$15,274,924.

In 2023, Ames filed suit in district court against the city, alleging breach of contract, breach of implied warranties, unjust enrichment, and declaratory judgment because the subsurface soil conditions were materially different than those in the Braun report. The city filed an answer and counterclaim alleging declaratory judgment and contractual indemnification. In 2024, the parties filed competing motions for summary judgment. The

district court granted the city's motion and denied Ames' motion. In relevant part, the district court concluded that the Braun report was not part of the contract the city and Ames entered into and thus created no implied warranty. This appeal followed.

DECISION

Ames argues that the district court erred in its summary-judgment decision by concluding that the Braun report was not part of the contract. We review summary-judgment determinations de novo "to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted).

The Braun Report

Ames argues that the district court erred by concluding that the Braun report was not part of the contract because the report was a contract document under the agreement's plain language.

Interpreting a written contract is a question of law reviewed de novo. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003). Absent ambiguity, the terms of a contract are given their plain and ordinary meaning. *Knudsen v. Transp. Leasing/Contr., Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *rev. denied* (Minn. Feb. 25, 2004). If a contract is unambiguous, "a court gives effect to the parties' intentions as expressed in the four corners of the instrument." *Id.*

The parties dispute the district court's interpretation of the term "bid packet." Ames argues that, when all the documents were condensed into one PDF file and made available to bidders, the Braun report was incorporated as a contract document. We disagree.

Per Article V of the contract, “Contract Documents” consist of the following sections:

- (1) Advertisement for Bids
- (2) Instruction to Bidders
- (3) Form of Proposal / Bid Packet
- (4) General Specifications
- (5) Special Provisions
- (6) Specifications
- (7) Plans and Drawings which are attached to the specifications.
- (8) This instrument and the Payment & Performance Bonds.

As the district court noted, there is no express section or form labeling or defining the term “bid packet.” However, the plain language of the contract does not include the Braun report as a contract document in Article V. Under “Instruction to Bidders,” it states:

All papers bound with or attached to the “Bid Packet” are a necessary part thereof and must not be detached. *The Bid Packet shall include* the Form of Proposal, the Certification of Compliance of Responsible Contractors, List of Materials Suppliers, Non-Collusion Affidavit, and Certificate of Compliance with MN Worker’s Compensation Law.

(Emphasis added.)

Here, the instruction to bidders states that the bid packet includes: “the Form of proposal, [] Certification of Compliance of Responsible Contractors, Lists of Materials Supplies, Non-Collusion Affidavit, and Certificate of Compliance with [Minnesota] Worker’s Compensation law.” These are documents bidders were required to submit to acknowledge their familiarity with the local conditions affecting the cost of the work, the general conditions, plans and specifications, and special provisions. In addition, Article V only identifies eight components that are considered contract documents and does not

include any reference to attachments, which is where the Braun report was included. The district court correctly concluded that interpreting the bid packet to include the Braun report would expressly contradict the unambiguous language provided in the contract. Under the contract's plain language, bid packet does not reference or imply that the Braun report or any geotechnical evaluations provided by the city would be considered part of a "bid packet" or that such evaluations were intended to be a contract document.

This conclusion is further supported by looking at the index sheet, included in the bid materials, which clearly identifies and lists what is included in the term "Contract Documents."² The index sheet has four categories with documents listed under each category. Categories include: "Contract Documents"; "General Specifications & City of Moorhead Specifications"; "Special Provisions"; and "Attachments[.]" The list of documents under "Contract Documents" are consistent with those in the language of Article V.³ In the index, the Braun report is unambiguously listed as an "Attachment[.]" and not included as a contract document.

Ames argues that the "bid packet" encompasses the entire document set that the city made digitally available to bidders and, therefore, is part of the contract. As the district court concluded, this argument contradicts the plain and unambiguous terms of the contract. If the city intended for every document that was provided to bidders to be a

² The record on appeal provides two versions of the Index Sheet. On review, it is unclear where each appear within the documents provided during the bidding process. Both versions, however, unambiguously include the Braun report as a "geotechnical report" in the listed attachments.

³ Article V(6) is titled "Specifications" and section (7) includes the "Plans and Drawings" which are attached to the specifications.

contract document, then parts of the contract would be rendered redundant. For example, Article V, identifying the eight components that are “contract documents,” would be unnecessary if every document provided to bidders was considered a contract document under Ames’ argument.⁴ This also applies to the index sheet, which lists what documents are “contract documents.” The Braun report is explicitly listed as an attachment, not a contract document.

Neither the listed contract documents nor the specific papers required to be in the bid packet referenced the Braun report or the attachment area where the Braun report was located. This shows that the Braun report was not considered part of the contract. Thus, the district court did not err in its conclusion that the Braun report was not a contract document.⁵

The Spearin Doctrine

Ames next argues that the district court’s narrow interpretation of the *Spearin* doctrine was erroneous.

The *Spearin* doctrine states that contractors are not excused or entitled to additional compensation due to unforeseen difficulties, “[b]ut if the contractor is bound to build according to the plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications.” *McCree &*

⁴ Ames also argues that the language in the contract’s general conditions and special provisions demonstrates that the Braun report was part of the contract. However, the Braun report was explicitly listed as an attachment and not a contract document. Thus, any argument that the report is implicitly within the document fails.

⁵ Because we conclude that the Braun report was not incorporated into the contract, we do not reach a decision on Ames’ differing site-conditions argument.

Co. v. State, 91 N.W.2d 713, 722 (Minn. 1958) (quoting *United States v. Spearin*, 248 U.S. 132, 136 (1918)). Further, the “responsibility of the owner is not overcome by the usual clauses requiring builders to visit the site, to check the plans, and to inform themselves of the requirements of the work.” *Id.* (quotation omitted). Thus, an implied warranty exists where an owner furnishes not only detailed plans and specifications, but also the particular construction methods the contractor is required to follow. *See id.* at 724-25.

Here, Ames relies on the Braun report to support the existence of an implied warranty under *Spearin*. But the district court correctly determined that the Braun report was not a binding plan or specification and its inclusion in the materials provided to bidders did not create an implied warranty. As the district court correctly reasoned, however, the Braun report is neither a plan nor a specification under the terms of the contract.

The contract for the project incorporated the Minnesota Department of Transportation’s 2018 Standard Specifications for Construction (MnDOT Standard Specifications). MnDOT Standard Specifications defined “plans” as “[t]he plans, profiles, typical cross-sections, and Standard Plans and Standard Plates that show the locations, character, dimensions, and details of the work,” and “specifications” as “[t]he Standard Specifications, the Supplemental Specifications, the Special Provisions, and any Department-approved changes to these Contract documents.”

The Braun report fails to meet the definition of “plans” because it does not provide design plans detailing the work for the project. While the Braun report does cover temporary shoring, it does not provide a design plan detailing the requirements for any temporary shoring methods. Similarly, the Braun report fails to meet the definition of

“specifications” because it does not provide requirements for any temporary-retention-system methods. In fact, the design of temporary retention systems was “expressly delegated” to Ames. In other words, Ames was not required to use the Braun report, nor was it required to complete the temporary retention systems according to the information within the report. The district court correctly reasoned that the city did not create an implied warranty.

Even if we were to consider the Braun report as part of the contract, *Spearin* would still not apply because the Braun report itself provided several disclaimers for the report’s use in the design process for temporary retention systems. Specifically, the Braun report repeatedly tells the reader that if designs, plans, or specifications change, Braun “should be informed,” and further analyses and revised recommendations may be necessary. A disclaimer in paragraph E.4. provides that “[t]he design of the temporary retaining structures is not within the Scope of Services of the geotechnical report.” Paragraph E.4.b. goes a step further, stating that “it is not the intent of this evaluation to design the temporary shoring.” Lastly, paragraph K.4. provides that the report was made for the “exclusive use” of the city, SRF, and railroad companies; and “[i]n the absence of our written approval, [Braun] make[s] no representation and assumes no responsibility to other parties regarding this report.” Paragraph K.4. continues, stating “[t]he data, analyses and recommendations may not be appropriate for other structures or purposes.” These disclaimers provide that (1) the temporary retention systems were not within the scope of services encompassed by the report, (2) Braun did not intend for the report to cover temporary retention system

designs, and (3) the report did not provide specific plans or specifications for the temporary shoring systems.

With the disclaimers provided, this case is analogous to *L.J. McNulty, Inc. v. Village of Newport*, 187 N.W.2d 616, 616-22 (Minn. 1971). In *McNulty*, a contractor sought additional compensation for a water and sewer project. *Id.* 617-18. Like here, McNulty relied on ground borings provided by the village during the bidding process. *See id.* at 618. McNulty encountered issues after work commenced. *Id.* Partway through the project, more borings were needed, and the project plans were altered. *Id.* McNulty, like Ames, incurred extra costs due to these issues. *See id.* at 617. The supreme court affirmed judgment in favor of the village, noting that “the village . . . told the bidders what information was included in the plans, where it came from, who prepared it, how it was prepared, and why.” *Id.* at 622. Like the Braun report, the supreme court noted that “the village even pointed out what the information was not.” *Id.*

In sum, the Braun report was not a plan or specification that created an implied warranty. Even if the report was included in the contract, the language of the Braun report itself explicitly states that the recommendations for temporary retention systems were just that—recommendations—not required plans or specifications detailing exactly how the temporary shoring systems should be constructed. Accordingly, the district court did not err by concluding that the *Spearin* doctrine did not apply.

Affirmed.