

**STATE OF MINNESOTA
IN SUPREME COURT**

Appellate Court Case No. A25-0754
Date of Filing of Court of Appeals Decision: March 30, 2026

Ames Construction Inc.,

Petitioner,

v.

City of Moorhead,

Respondent.

REQUEST FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Associated General Contractors of America (“AGC”), Associated General Contractors of Minnesota (“AGCMN”), and American Road & Transportation Builders Association (“ARTBA” and collectively, “Amici”) respectfully bring this Request for Leave to Participate as *Amicus Curiae* in the above-captioned matter pursuant to Appellate Rules of Civil Procedure 117 and 129.

Amici’s interests in this matter are public. They are all non-profit trade associations comprised of general contractors, subcontractors, owners-developers, and other businesses that perform, supply, or have interests in highway, road, heavy-civil, industrial, and commercial construction in Minnesota and around the United States. Both AGC and ARTBA are national organizations. Their members are and will be directly impacted by the Court of Appeals’ decision as well as any subsequent decision made by this Court. Amici represent the interests of their members on industry-related issues at all levels of government and work to promote thoughtful and durable policies and practices that benefit all stakeholders in the construction industry.

All three Amici support the Petitioner and the Petition.

Amici respectfully maintain that their participation as amici is necessary because this case threatens the ability of contractors to challenge disclaimers provided by owners under the *Spearin* Doctrine; makes Minnesota law discordant with national and state precedent; empowers owners and developers to push for unreasonable, overly broad disclaimers; shifts risks contrary to industry convention; threatens to increase the costs of publicly funded projects; and decreases competition by increasing the risks associated with

public bidding. Amici endeavor to assist the Court in understanding the practical and legal impacts of the case.

ARGUMENT IN SUPPORT OF PETITION FOR REVIEW

I. THE QUESTIONS PRESENTED ARE IMPORTANT ONES THAT THE COURT SHOULD RULE ON

The Petition should be granted because the questions presented are important ones that the Court should rule on. Minn. R. App. P. 117, subd. 2(a). The *Spearin* Doctrine stands for the proposition that when an owner furnishes project information to a contractor or specifies construction materials or methods, then a *non-contractual*, implied warranty is created that the information and/or materials will be accurate and achieve the desired result. *United States v. Spearin*, 248 U.S. 132, 136–38 (1918). This warranty cannot be disclaimed with broad, general disclaimers, and, when reasonable, the contractor may rely on the owner-furnished information. *Robert E. Lee & Co. v. Commission of Public Works of City of Greenville*, 149 S.E.2d 55, 58–59 (S.C. 1966) (holding that a contractor’s reasonable reliance on owner provided boring test results was not overcome by general disclaimers); *White v. Edsall Const. Co.*, 296 F.3d 1081, 1085 (Fed. Cir. 2002) (holding that general disclaimers are ineffective to overcome the doctrine’s implied warranty). This implied warranty is now universally recognized in the United States as the “*Spearin* Doctrine,” including by Minnesota. *See, e.g., Stanton v. Morris Const. Co.*, 199 N.W. 104, 106 (Minn. 1924) (adopting the *Spearin* Doctrine in Minnesota); *McCree & Co. v. State*, 91 N.W.2d 713, 722 (Minn. 1958) (same); BRUNER & O’CONNOR ON

CONSTRUCTION LAW § 9.94 (discussing the adoption of the doctrine across jurisdictions).

But the District Court and the Court of Appeals have upended this long-settled principle in Minnesota, gutting it to the point of effectively overturning it, by prohibiting contractors, in this case Ames Construction, from relying on owner-supplied information not expressly included in the contract. As public contractors cannot negotiate the terms of public contracts, contractors will be forced to accept the risk that owner-supplied subsurface information is false or misleading, and eat any associated costs. The Court of Appeals further gutted the doctrine by restricting the implied warranty—which is inherently a non-contractual warranty—to instances where owners furnish detailed plans and specifications and “the particular construction methods the contractor is required to follow.” *Ames Constr. Inc. v. City of Moorhead*, 2026 WL 861199, at *3 (Minn. App. March 30, 2026). In practice, contractors almost always control their means and methods. Thus, the long-standing, risk-setting *Spearin* Doctrine as formulated by the Court of Appeals would hardly, if ever, be fair or appropriate.

The impact of this decision should not be understated. It will necessarily mean that (a) reasonable contractor’s reliance on owner-supplied bid information can be defeated by general disclaimers and labels (or “weasel words”)¹—which is exactly the opposite of what *Spearin* stands for; (b) construction risks will be misallocated and inequitably shifted onto contractors—which do not have sufficient time to conduct their own, independent site soil

¹ See *Drennon Construction & Consulting Inc. v. Department of Interior*, ASBCA No. 49509, 1999-2 B.C.A. ¶ 30,512 (July 1999).

investigations, particularly in the dead of winter; (c) construction bidding practices will become less efficient, less open, less fair, and much more costly for taxpayers because contractors will not have any reliable subsurface information upon which to bid and will have to include large contingencies to cover large unknown risks; (d) costs will also increase as contractors will have to perform more frontend work without being awarded the job and will have difficulty in obtaining access to public land to perform subsurface investigations; and (e) Minnesota will stand apart from the broad, national consensus on construction law. *See Sherman R. Smoot Co. v. Ohio Dept. of Adm. Serv.*, 736 N.E.2d 69, 77 (Ohio Ct. App. 2000) (“The basis for the *Spearin* doctrine is the belief that it is unreasonable to expect every bidder on a government contract to perform expensive job site investigations . . . To hold otherwise would reduce the number of bidders on government contracts and increase the price of the few bids received.”)

Amici urge this Court to step in and provide a clear restatement of the *Spearin* Doctrine to reaffirm the long-standing Minnesota law, maintain efficiency in construction procurement, prevent cost increases for publicly funded projects, and make it easier for district courts—as well as contracting parties—to follow it.

II. A DECISION BY THE COURT WILL DEVELOP, CLARIFY, AND HARMONIZE THE LAW IN A MANNER THAT HAS STATEWIDE IMPACT

The resolution of the questions presented has statewide impact, which warrants review by the Court. Minn. R. App. P. 117, subd. 2(d)(3). Bidding for publicly funded construction projects occurs daily around the state. Cities, towns, school districts, and other

municipalities across the state use a process similar, if not identical, to the one used by the City of Moorhead here because state law requires it. Minn. Stat. § 471.345.

All of those procurements involve the government entity providing information to the contractor for the contractor to rely on and use in formulating a bid that can be accurately compared to other bids. And it's rare for the contracts themselves—which are often take-it-or-leave-it contracts—to expressly incorporate all of the owner-provided information. It's common, in contrast, for the contracts to not expressly reference all the information and common that the information includes geotechnical reports—which provide detailed information about the land on which the Project is being built for the contractor to use to price its bid (exactly what Ames did here). It would have been wrong, almost impossible, and incredibly risky, for Ames, or any other bidder, to bid on the project at issue without being supplied with, and relying on, a geotechnical report.

Contractors around the state and the country need the Court to step in and clarify these issues. Otherwise, if the contractors operate under the Court of Appeals' *Spearin* framework, costs are going to rise and construction around the state is going to take even longer than it already does.

CONCLUSION

For these reasons, the Court should grant Amici leave to participate and grant the petition for review.

Dated: May 13, 2026

Respectfully submitted,

/s/ Joshua T. Peterson

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CERTIFICATION OF DOCUMENT LENGTH

I hereby certify that this document conforms to the requirements of the applicable rules, is produced with a 13-point font, and the length of the document is 1,262 words.

This document was prepared using Microsoft Word 365.

Dated: May 13, 2026

Respectfully submitted,

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