

STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made effective on January 13, 2016 by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as "LEDA") and Monsanto Company, a Delaware corporation, and its subsidiaries (hereinafter collectively referred to as "Recipient"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow.

1. **Applicable Law:** It is understood by and between the parties that the term "Act," as used herein, is intended to mean the Development Corporation Act of 1979, as amended. (Sec 501.001 et seq, Local Government Code, formerly Sec 5190.6, VACS.) The parties hereto covenant and agree to comply with the terms of the Act applicable to this Agreement.

2. **Parties:**

A. LEDA, a Texas non-profit corporation as well as a tax exempt 501(c) 4 entity, was created by the City of Lubbock, Texas, as an Industrial Development Corporation under the Act for the purpose of creating and retaining positions and encouraging new businesses to be established in Lubbock, Texas, to stimulate business and commercial activities, as well as all other purposes allowed by the Act.

B. Recipient is preparing a new "Project" which shall include the construction of a new "cotton manufacturing" facility located at Lubbock, Texas (NAICS 3399) with projected employment of 40 new employees. Its business project is anticipated to result in 40 new Primary Jobs for the City of Lubbock, with a Target Annual Compensation as follows:

- (1) Year One: \$ 555,000 in the aggregate
- (2) Year Two: \$2,065,000 in the aggregate
- (3) Year Three: \$2,065,000 in the aggregate
- (4) Year Four: \$2,065,000 in the aggregate
- (5) Year Five: \$2,065,000 in the aggregate
- (6) Year Six: \$2,065,000 in the aggregate,

or a total of \$10,880,000 over six years. Total capital investment is estimated to be \$140,000,000 and is anticipated to occur over a two-year period.

C. Recipient is a Delaware corporation authorized to do business in Texas.

3. **Purpose:** The purpose for this Agreement is to formalize the agreements between LEDA and Recipient for the payment of certain costs associated with Recipient's Project and specifically state the covenants, representations of the parties, and the incentives associated with Recipient's commitment to

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abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Board of Directors of LEDA as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction; although, incentive payments thereunder are divided into multiple installments as annually earned. A failure to perform any obligation by Recipient may constitute a breach of the entire Agreement and terminate any further commitments by LEDA.

4. **Definitions:**

- A. The "Act" shall refer to the Development Corporation Act of 1979, as amended, as Sec 501.001 et seq, Local Government Code, formerly Sec 5190.6, VACS.
- B. "Annual Compensation" shall mean the higher of actual compensation or annualized base pay or actual annualized payment as reasonably determined by LEDA's accountants/ representative.
- C. "Baseline Employment Level" is defined to mean the employee census on the day preceding the Term of this Agreement; the parties agree that because the Project is the construction of a new facility, the Baseline Employment Level shall be zero.
- D. "Baseline Measurement Date" shall mean the day preceding the Start Date of the contract.
- E. "Census" is defined as a compilation listing of the employee name, address, date of hire, date of termination, position, base pay, and indication of full-time or part-time status. Such information is preferred to be presented in Excel format which shall be made available to the Accountant in performing the review.
- F. "Full-Time Equivalent Employee" shall include individuals employed in "Primary Jobs" as defined by the Act, as well as contract or leased employees performing "Primary Jobs" at the Project in the City of Lubbock (or individuals who are directed or managed by management at the Project) on behalf of Recipient.
- G. "Layoff" is defined as an event, due to adverse or changing business conditions, that result in the loss of employment and shall exclude loss of employment due to a casualty at the Project if the Recipient chooses to rebuild the Project. Employees meeting this definition shall have lost their jobs through no fault of their own.
- H. "LEDA" shall refer to Lubbock Economic Development Alliance, Inc., a Texas non-profit corporation, created by the City of Lubbock as an "Industrial Development Corporation," pursuant to the Act.
- I. "LEDA's Sliding Scale" shall mean the incentive allocation to be utilized in determining compliance with the future employment payments toward the cost of the Project confirmed by the establishment of new Primary Jobs. The application of LEDA's incentive sliding scale as to each "full-time equivalent employee" is as

follows:

Actual Compensation As Defined Herein	Total Incentive
\$75,000 and above	\$10,000.00
\$60,000 - \$74,999.99	\$7,500.00
\$50,000 - \$59,999.99	\$5,000.00
\$40,000 - \$49,999.99	\$4,000.00
\$30,000 - \$39,999.99	\$3,000.00
\$25,000 - \$29,999.99	\$2,500.00

- J. "Measurement Date" shall mean the date upon which the determination is made as to whether Recipient is in compliance with creating and/or maintaining the Target Job Positions. Employees must be both employed and working on the Measurement Date. If an employee has been laid off but paid through the Measurement Date, his employment will not be counted towards incentive. Measurement Dates shall be:
- (1) Year One: January 1 of the calendar year of the completion of Construction
 - (2) Year Two: January 1 of the calendar year following Year One
 - (3) Year Three: January 1 of the calendar year following Year Two
 - (4) Year Four: January 1 of the calendar year following Year Three
 - (5) Year Five: January 1 of the calendar year following Year Four
 - (6) Year Six: January 1 of the calendar year following Year Five
- K. "Payback Provisions" shall mean forfeiture of all unpaid incentives in accordance with the terms of this Agreement.
- L. "Primary Jobs" – shall refer to a job that produces goods and/or services for customers that are predominantly outside the community of Lubbock, Texas.
- M. "Project" shall mean the project identified in Paragraph 2B, above.
- N. "Recipient" shall refer to Monsanto Company and its subsidiaries, a Delaware corporation authorized to do business in Texas, and the recipient party to this Agreement.
- O. "Target Job Positions" shall refer to an increase of 40 Primary Jobs in excess of the Baseline Employment Level.
- P. "Term", as used herein, shall begin with the Start Date of the date of this Agreement, and end on December 31 in the sixth year following completion of construction of the Project (the "Termination Date") unless earlier breached by Recipient's failure to perform.

5. **Representations of Recipient:**

- A. Recipient represents that it will utilize the incentive for reimbursement of costs

involved and associated with the Project.

- B. Recipient represents that it is authorized to do business in Texas and has authorization to enter into this Agreement on its behalf.
- C. Recipient represents that it has sought from LEDA economic assistance pursuing Recipient's Project.
- D. Recipient represents that it has conferred with attorneys of its own choosing and is fully knowledgeable of the terms of the Act and understands the reporting requirements of the Act as set forth in Texas Code Ann. §313.032, as well as all conditions precedent and subsequent as required to be eligible for the incentives offered by LEDA, including the Payback Provisions.
- E. Recipient represents that it acknowledges that its failure to perform any reporting requirements within a reasonable period of time after the request is made and/or its failure to maintain the Baseline Employment Level could result in payment adjustments.
- F. Recipient understands and agrees that any variations as to any term of this Agreement or any terms or conditions of the incentives as stated must be mutually agreed to in written supplements or addenda since no oral agreements, amendments, or representations will be binding on either party.
- G. Recipient certifies that all jobs for which incentives are being requested are new Primary Jobs at the Project and that none of the jobs are to fill positions that resulted from layoffs in Lubbock by Recipient during the 12 month period prior to the date of this Agreement.
- H. Recipient agrees to participate in any LEDA sponsored wage and benefit surveys, and with Recipient's prior written approval, Recipient agrees to participate in any marketing materials that focus on economic development for the City of Lubbock.
- I. Recipient agrees to make a good faith effort to hire low income/socio-economically disadvantaged job applicants. The parties agree that Monsanto's activities under Paragraph 5J shall satisfy the requirements of this paragraph.
- J. Until the end of two years after the completion of the construction of the Project, Recipient agrees to work with LEDA's Director of Workforce Development or Workforce Solutions of the South Plains to facilitate the posting and advertisement of new jobs at their property, as well as for the recruitment of potential qualified applicants from the City of Lubbock and Lubbock County for these positions. Workforce Solutions of the South Plains offers other employer services, such as assessment of basic skills and work aptitudes of potential employees, job matching services, labor market information, assistance in arranging workforce training and outplacement services which the recipient may access.

- K. Recipient agrees to begin construction at the new location within 15 months of the date it receives title to the property from LEDA, as verified by providing documentation of proof of construction on the Project or a copy of their Notice to Proceed to LEDA, subject to extension for force majeure and, provided Recipient shall have made timely application for permits, subject to extension for delays in (1) issuance of governmental approvals required for construction of the Project, (ii) the annexation of the real property constituting a portion of the Project into the City of Lubbock, Texas, and (iii) any subdivision and/or re-platting necessary for the construction of the Project.
- L. Recipient agrees to a capital investment of at least \$100,000,000 into the Project, as supported by information from Recipient which may be verified by LEDA's designated third party accounting representative.

6. **Representations by LEDA:**

- A. LEDA represents that it is established as an Industrial Development Corporation under the Act and further represents that the costs applied toward Recipient's Project as stated in this Agreement have been found by the Board of Directors of LEDA sitting as fact finders have determined the Project to be in compliance with the requirements and purposes of the Act, the provisions of LEDA's charter, as well as for the benefit of the City of Lubbock, Lubbock County, Texas, and trade area.
- B. LEDA represents that it has authority to enter into this Agreement. LEDA understands and agrees that any variation in terms of this Agreement or the incentives offered to Recipient or commitment by Recipient will only be binding if mutually agreed to in writing.
- C. LEDA represents that the real property described in Section 7 has gas, electric and communication services bordering such property.
- D. LEDA shall support Recipient's activities with the City of Lubbock and Lubbock County to provide the Project 100% tax abatement for ten years on all real and personal property at the Project.
- E. LEDA shall cause, at its cost, an 8 inch water line to be brought along the eastern portion of the real property described in Section 7 as well as design and construction of a septic system including septic lines to three (3) buildings no later than July 15, 2016, at connection points and locations and pursuant to plans and specifications approved in writing by Recipient.
- F. LEDA represents that the real property described in Section 7 is eligible for Triple Freeport Exemption (City/County/School District) on personal property taxes on eligible good and inventories that are processed and leave Texas with 175 days. LEDA shall support Recipient's activities to obtain the Triple Freeport Exemption for Recipient's activities at the Project.
- G. The site is eligible for Foreign Trade Zone designation. If Recipient would like to

apply for Foreign Trade Zone designation, LEDA would facilitate the application and activation process on behalf of Recipient.

- H. Along with its partners, LEDA will provide assistance with workforce attraction, screening, and interviewing assistance to help Recipient in the initial hiring process.
- I. LEDA will assist with the application for training assistance through a Skills Development Fund Program to help offset training costs.
- J. LEDA will bring together a Site Development Briefing Team that would include the City of Lubbock and the various public service utility companies. This team would help facilitate the process by serving as the direct, immediate line to key decision-makers that can troubleshoot and resolve problems encountered in the development and permitting process, such as issues related to local subdivision, uniform building, and uniform fire codes. This courtesy briefing and conceptual plan review does not replace any regular development processes.

7. **Real Property:** LEDA shall convey approximately 150 acres of land as identified by Special Warranty Deed attached as Exhibit A and pursuant to the terms and conditions as set forth in the "Agreement of Sale & Purchase" attached as Exhibit B. Such conveyance shall take place at a simultaneously closing on or before January 20, 2016. The obligations and rights of Recipient under this Agreement shall be conditioned upon the parties closing on the transfer under the Agreement of Sale & Purchase.

8. **Capital Incentive to be Awarded and Terms of Award**

Initial Capital Investment (exclusive of Real Property, if any):

LEDA hereby grants to Recipient a potential incentive of \$1,920,000 (through job creation and capital investment) with payments to be expressly made under the following terms and conditions:

A. **Job Creation**

- 1. LEDA agrees to pay up to a maximum of \$220,000 for Job Creation incentives as set forth herein:
 - a. up to \$60,000 of Project costs in Year 1 for the creation and/or maintenance of full-time Primary Jobs during Years 1 – 5. Recipient shall earn one-fifth (1/5) of the additional Project cost incentive at each Measurement Date and
 - b. up to \$160,000 of Project costs for Year 2 for the creation and/or maintenance of full-time Project Jobs during Years 2 - 6. Recipient shall earn one-fifth (1/5) of the additional Project cost incentive at each Measurement Date.

The payments are conditioned upon the creation of Primary Jobs pursuant to

and in compliance with LEDA's Sliding Scale after Recipient's written substantiation of such employment and under the following terms and conditions:

Recipient agrees to establish a Baseline Employment Level and Census and shall timely provide such information to LEDA or its designated accounting representative when requested; the parties agree that the Baseline Employment Level is zero since the Project is new construction. Recipient agrees to maintain the Baseline Employment Level through the term of this Agreement and create and maintain the additional full-time Target Job positions intended to qualify for the additional Project cost incentive, as offered by LEDA. Recipient shall earn one-fifth (1/5) of the additional Project cost incentive at each Measurement Date. Such earned portion shall be paid within a reasonable time following the completion of a yearly review by LEDA or its designated representative which payment shall be made within fifteen (15) days after LEDA's board review and approval of the Accountant's review. LEDA and its representative agree to maintain confidentiality of all of Recipient's records and to return all such records unless other mutually agreeable arrangements are made regarding record retention by Recipient or inspection access to LEDA.

2. Recipient understands and agrees that in the event, other than as a result of a force majeure (as defined in Section 15.F below), there is a failure to meet its Annual Compensation in the aggregate or attain its Target Job Positions, then LEDA shall have the right to make all necessary adjustments according to LEDA's Sliding Scale, not to exceed the sums as approved by LEDA's Board of Directors.
3. In evaluating Recipient's Request and pursuant to Section 40(b) of the Act, it is the intention of the parties that, assuming Recipient is successful in total completion of Recipient's Project, its total Target Job Positions of 40 in number would ultimately result in 40 new Primary Jobs for the City of Lubbock, with a target Annual Compensation as follows:

- (1) Year One: \$ 555,000 in the aggregate
- (2) Year Two: \$2,065,000 in the aggregate
- (3) Year Three: \$2,065,000 in the aggregate
- (4) Year Four: \$2,065,000 in the aggregate
- (5) Year Five: \$2,065,000 in the aggregate
- (6) Year Six: \$2,065,000 in the aggregate,

or a total of \$10,880,000 over six years.

Each annual incentive installment shall be considered as earned as of each Measurement Date during the Agreement when, by review, it is confirmed that Recipient attained the Target Job Positions and the target Annual Compensation.

Should Recipient fail to meet its Target Job Positions during any year or years, but ultimately meet its overall Target Job Positions, LEDA, shall, at its discretion have the

right to allow recapture of forfeited incentives not to exceed the maximum amount approved by the Board. Should Recipient exceed its Target Job Positions during any year or years, LEDA, shall, at its discretion have the right to allow accelerated job creation incentive payments, not to exceed the maximum amount approved by the Board.

B. Capital Investment by Recipient

1. In addition to the payments under Paragraph 8A, LEDA agrees to pay as set forth herein up to \$1,700,000 of Project costs, payable over five (5) years, with first payment being made upon LEDA's receipt of (1) the report from the accounting representative, a (2) Certificate of Occupancy and a (3) formal notification of commencement of operations from the Recipient. Subsequent annual payments made on or around the annual anniversary date of the first payment, in amounts equal to the following:

Less than \$50M	Equal to \$50M and less than \$70M	Equal to \$70M and less than \$100M	Equal to or greater than \$100M
1 st payment = \$0	1 st payment = \$200,000	1 st payment = \$300,000	1 st payment = \$400,000
2 nd payment = \$0	2 nd payment = \$200,000	2 nd payment = \$300,000	2 nd payment = \$400,000
3 rd payment = \$0	3 rd payment = \$200,000	3 rd payment = \$300,000	3 rd payment = \$400,000
4 th payment = \$0	4 th payment = \$100,000	4 th payment = \$200,000	4 th payment = \$300,000
5 th payment = \$0	5 th payment = \$50,000	5 th payment = \$100,000	5 th payment = \$200,000

2. Recipient agrees to timely provide information to LEDA's designated accounting representative when requested regarding the final capital investments of the project. LEDA and its representative agree to maintain confidentiality of all of Recipient's records and to return all such records unless other mutually agreeable arrangements are made regarding record retention by Recipient or inspection access to LEDA.

9. **Conditions for Payment of Incentives:** It is specifically agreed and understood by and between the parties that LEDA has agreed to make the project payments strictly upon the following terms and conditions:

- A. Any use of LEDA's name for publicity in connection with Recipient's business or activities must be approved in advance by LEDA. It is understood that LEDA may make known its contributions to Recipient.
- B. Recipient shall have delivered to LEDA evidence of its authority for the execution and performance of this Agreement, as well as timely delivery of all other information expressly called for in this Agreement.
- C. For the duration of this Agreement, in order to receive benefits hereunder, Recipient must maintain a business location in the City of Lubbock or Lubbock County and its legal status under federal and state law duly and remain qualified to do business in the State of Texas.

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- D. The operations or activities of Recipient and its employees shall be performed and conducted in a professional and businesslike manner and shall be in keeping with federal and state laws and regulations, and any ordinances of the City of Lubbock and/or governmental entities which may have jurisdiction over operations and activities of the Project and the Recipient.
- E. Recipient agrees to, in good faith, engage in a confidential review and examination of all material records by LEDA's accountants and the Parties mutually agreed that such review is necessary to insure compliance with the conditions of the incentive payments (including base salary, overtime, and fringe benefits). Recipient agrees to timely provide to LEDA's accountants all information reasonably requested by the accountants. Should Recipient fail to provide to the accountants the information necessary to complete the review within six months from the measurement date, the job creation incentives for the year being reviewed shall be forfeited by Recipient. All such reviews and examinations shall be subject to the Recipient's confidentiality and security policies.
- F. Recipient certifies that the Recipient does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Recipient is convicted of a violation under 8 U.S.C. § 1324a(f), Recipient shall repay the amount of the public subsidy provided under this Agreement, with interest at the legal pre-judgment interest rate, with attorney's fees, not later than the 120th day after the date LEDA notifies Recipient of the violation.
- G. Any information obtained by LEDA or its agents or assigns during negotiations leading up to the execution of the Agreement or otherwise about the business, have or will be returned upon the execution of this Agreement, subject to a right to a continuing examination by LEDA in order to comply with LEDA's reporting obligations, if any. Such information shall be considered confidential and beyond the scope of any Open Records request as proprietary information.
- H. Recipient will notify LEDA in writing within three (3) business days of any lay-off or reduction in force greater than 20% of the existing workforce, related to this specific project. The notification must include the number of employees being laid off, their job titles, the reasoning for the lay-off, and what the company is doing to assist the laid off employees. Likewise, if an announcement is made that the Recipient is closing its doors and ceasing business operations at the Project during the review of job creation incentives, LEDA, in its sole discretion, may elect to suspend payment to Recipient.

10. Payback Provisions and Events of Default: Recipient acknowledges that LEDA and Recipient are required to remain in conformance with the statutory provisions of the Act. The parties hereto agree that in the event Recipient fails to comply with the provisions of this Agreement, including but not limited to Paragraphs 5E, 5K, 5L, 9C, 9D, 9E or 11, and after written notice and failure to cure the violation within a reasonable period of time after such notice, then LEDA, in its sole discretion, may terminate this Agreement and permanently suspend all future payments to Recipient. Should the provisions of paragraph 5K fail to be met by the Recipient, LEDA reserves the right to

request reimbursement of an amount of \$645,000; the amount equal to the purchase price of the land transferred to the Recipient as reference in paragraph 7 of this agreement as "Agreement of Sale & Purchase" Exhibit B.

In addition, if within 10 years from the date hereof, Recipient of this Agreement abandons or vacates the Property, Recipient shall reimburse LEDA 1) for payments under Section 8.B. herein and 2) for LEDA's out-of-pocket costs of the design and installation of the water line and of a septic system including septic lines to three (3) buildings which amount may be verified by Recipient's third party accounting representative, with such amount reduced by 10% for each full year of operation of the Project in accordance with this Agreement.

11. **Assignment:** This Agreement shall not be assignable, either in whole or in part, except this Agreement may be assigned to any successor or assign of Recipient by merger, consolidation or transfer of all or substantially all of the assets. Any assignment not authorized by this Agreement shall not disqualify the remaining or new entity from applying to LEDA for new incentive consideration.

12. **No Privity of Endeavor Nor Joint Venture:** It is specifically agreed that there shall be no privity of endeavor nor joint venture whatsoever between LEDA and Recipient and the sole connection between the parties is the contribution of the economic assistance by LEDA under the restricted conditions as set forth herein and that such contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed as a continuing basis of financial support by LEDA to Recipient. The parties hereto have entered into this Agreement in an arms-length transaction. No agency relationship or fiduciary relationship is intended to be created by this Agreement and no such relationship shall be determined to exist.

13. **Good Faith -Normal Business Operations:** The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions. The parties further agree to transact all their business under and that which relates to this Agreement in accordance with their normal business operations.

14. **Miscellaneous Provisions:**

A. **Notices:**

For the purposes of any notices to be given, pursuant to the terms of this Agreement, the parties shall use the following addresses or any other address as may be changed by the parties, upon written notice to the other party, as follows:

(1) John Osborne
CEO and President
LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.
1500 Broadway, 6th Floor
Lubbock, TX 79401

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(2) With a copy to:

Ann Manning
Attorney at Law
Underwood Law Firm, PC
P.O. Box 16197
Lubbock, Texas 79490

(3) With a copy to:

Duane Simpson
Government Affairs
Monsanto
800 North Lindbergh Boulevard
Mail Zone C3S
St. Louis, MO 63167

(4) With a copy to:

Monsanto
800 North Lindbergh Boulevard
Mail Zone
St. Louis, MO 63167
Attn: Tax Department

(5) With a copy to:

Monsanto
800 North Lindbergh Boulevard
Mail Zone
St. Louis, MO 63167
Attn: General Counsel's Office – Real Estate

Notices shall be deemed to be given upon the placing in the United States Mail, Certified Mail, Return Receipt Requested, to the above-described addresses or as may be changed, pursuant to the terms and conditions hereof.

- B. Entire Agreement: This instrument constitutes the entire agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties.
- C. Governing Law and Performance: This Agreement shall be governed by the laws of the State of Texas and shall be deemed to be executed in and performance called for in Lubbock, Lubbock County, Texas.

- D. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties. Notwithstanding anything contained herein to the contrary, should it be determined that LEDA cannot legally provide the benefit described in this Agreement and/or should funding for any of such benefits be terminated, then all future obligations of the Recipient shall be terminated.
- E. Binding Effect: This Agreement shall be binding upon the undersigned, their successors and assign by merger, subject to the express terms of this Agreement concerning assignment.
- F. Force Majeure: If any default or performance of any other covenant or term of this Agreement is delayed by reason of strike, riots, shortages of labor, materials, supplies, or transportation, war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire, or other casualty, or any other circumstances beyond a signatory party's control, then the duty to do or perform the term or covenant, regardless of whether the circumstance is similar to any of those enumerated above or not, is excused during the delay period and all timeframes for performance under this Agreement shall be extended accordingly.
- G. Time is of the Essence: The parties agree that time is of the essence in the execution of this Agreement.

[signature page follows]

EXECUTED in multiple counterparts, each of which is an original, on this 13th day of January, 2016.

LUBBOCK ECONOMIC DEVELOPMENT
ALLIANCE, INC.



John Osborne, CEO and President

ATTEST:


Linda Davis

RECIPIENT:

MONSANTO COMPANY

By: 
David W. Penn

Its: David W. Penn

Cotton & Specialty Crops Manufacturing
Lead