

FORM APPROVED COUNTY COUNSEL
BY: Synthia M. Gunzel 3-30-11
DATE: 3-30-11
BY: SYNTHIA M. GUNZEL
Department of Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

225



FROM: Economic Development Agency / Facilities Management

SUBMITTAL DATE:
March 31, 2011

SUBJECT: Public Safety Enterprise Communications Project Ground Lease, Timoteo

RECOMMENDED MOTION: That the Board of Supervisors:

1. Consider the attached Addendum along with the Final Program Environmental Report (SCH 2008021126) for the County of Riverside's Public Safety Enterprise Communication (PSEC) Project;
2. Find that use of the lease area referenced herein will not result in any new significant environmental effects, will not substantially increase the severity of previously identified significant effects, and will not necessitate new mitigation measures;
3. Approve the attached ground lease and authorize the Chairman of the Board to execute the same on behalf of the County of Riverside; and

(Continued)

FISCAL PROCEDURES APPROVED

PAUL ANGULO, CPA, AUDITOR-CONTROLLER

BY: Samuel Wong 4/4/11
SAMUEL WONG

Robert Field

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 15,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: PSEC Budget

Positions To Be Deleted Per A-30 ☐
Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION: APPROVE

BY: Jennifer L. Sargent
County Executive Office Signature

Dep't Recomm.: ☐ Policy
Per Exec. Ofc.: ☒ Policy

Consent ☐
Consent ☐

Prev. Agn. Ref.: 3.37 of 12/18/07; 3.52 of 9/2/08

District: 1

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.13

RECOMMENDED MOTION: (Continued)

4. Authorize the Assistant County Executive Officer/EDA, or designee, to execute any other documents and administer all actions necessary to complete this transaction.

BACKGROUND:

The County of Riverside's existing law enforcement and emergency first responder voice communication network is lacking in coverage and functionality. As currently configured, the county's system of approximately 20 communication sites provides voice coverage to only about 60% of the county. The PSEC project will construct approximately 65 new communication sites to remedy this deficiency, and will ultimately provide communication coverage to approximately 95% of the county. The new system is urgently needed to ensure the safety of the public, Sheriff's deputies, and firefighters.

The Board of Supervisors approved a Program Environmental Impact Report (PEIR) for the project on September 2, 2008. The PEIR imposed a number of standard mitigation measures that were applicable to all of the sites. However, at the time of the PEIR's adoption, certain design details and a final location for a number of the sites had not been finalized. To provide for such a contingency, the PEIR prescribed mitigation measures to be implemented if a site or its supporting components (access roads, power alignments, etc.) were to be relocated to an area that had not been assessed and/or surveyed as part of the PEIR. This programmatic approach was adopted to allow modifications and expansion of the project's design without the need for recirculation of the PEIR. Specific measures prescribed in the PEIR required the county to determine if the impacts associated with the proposed modification/addition were consistent with the analysis and findings of the PEIR. Specific performance measures were adopted to identify the analysis necessary to make this determination.

Since adoption of the PEIR in September 2008, it has been determined that two sites that had been evaluated in the PEIR had to be relocated due to acquisition issues and communication coverage deficiencies. As such, the county undertook to implement the mitigation prescribed in the PEIR that was required in the event of site relocation and/or network expansion. Pursuant to CEQA Section 15164, an addendum to the PEIR was prepared.

The addendum (included as Attachment A) evaluates two relocated sites: one of which is Timoteo. This site was not specifically evaluated in the PEIR. The purpose and need of this site is summarized below, and is presented in greater detail in the attached addendum. The analysis for this site is also presented in the attached addendum, and incorporates the findings from the biological and cultural resources studies that were required as per the PEIR mitigation measures.

Since adoption of the PEIR in September 2008, it has been determined that the originally proposed Timoteo Communication Site location is not available for acquisition. As such, the proposed Timoteo site had to be relocated to an area that could still meet the site's critical radio coverage objectives. The alternative site is located approximately 0.25 miles south of the original proposed Timoteo site. The site is located on the eastern side of Redlands Boulevard. This proposed site would provide emergency services communication coverage to areas in Moreno Valley and along Redlands Boulevard. Emergency responders working in this area currently do so without reliable communication coverage to summon backup or needed resources. The construction of the Timoteo Communication Site is intended to supplement the coverage in this area and remedy the deficiency.

(Continued)

BACKGROUND: (Continued)

The Public Safety Enterprise Communications (PSEC) project utilizes long-term ground leases in those situations where the site owner will not sell the small land parcel required for the wireless communication site. The proposed site called Timoteo is situated adjacent to Redlands Boulevard between Moreno Valley and Timoteo Canyon Road, providing coverage to areas flanking the Badlands.

The Ground Lease is summarized below:

Location:	Located on Assessor's Parcel Numbers 473-120-009
Lessor:	The Frank Paul Elardi Separate Property Trust Dated July 1, 2010
Size:	25.49 acres
Term:	Twenty five years commencing February 1, 2011
Rent:	Paid monthly, starting at \$3,000 per month, fixed for five years.
Rent Adjustments:	Beginning in the 6 th year, increases 3% annually
Utilities:	By County
Interior/Exterior Maintenance:	By County

The attached Ground Lease has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

All associated costs for this Ground Lease will be fully funded through the PSEC budget. Riverside County Information Technology's (RCIT) annual budget will carry operating costs. RCIT will reimburse the Economic Development Agency for all associated lease costs. Any necessary budget adjustments will come under separate cover to the Board.

The county will be responsible for weed abatement and property taxes/assessments. The current annual property taxes are less than \$300.00.

COMMUNICATIONS SITE LEASE

This Lease is made this ____ day of _____, 2011 by and between the **County of Riverside**, a political subdivision of the State of California (hereinafter "Lessee"), and **FRANK PAUL ELARDI, Trustee of THE FRANK PAUL ELARDI SEPARATE PROPERTY TRUST DATED JULY 1, 2010**, hereinafter "Lessor".

RECITALS

A. Lessor is the owner of that certain real property consisting of 25.49 acres of vacant land (hereinafter "the Property") situated near the City of Moreno Valley, County of Riverside, State of California, identified as Assessor's Parcel Number 473-120-009, more particularly depicted on Exhibit "A" (assessors' parcel map), attached hereto and incorporated herein.

B. Lessee desires to lease the Property from Lessor, for the purpose of constructing, installing, operating, and maintaining a communications facility, tower and related equipment and structures to house such facilities and equipment.

NOW, THEREFORE, the parties agree as follows:

1. Recitals. The Recitals set forth hereinabove are an integral part of this Lease and they are therefore, incorporated herein by this reference thereto.

2. Premises. Subject to the following terms and conditions, Lessor hereby leases to Lessee exclusive use of the Property to construct a communication facility and install certain equipment and fixtures (hereinafter "the Leased Premises").

3. Initial Term. The Term of this Lease shall be for a period of twenty five years, commencing on February 1, 2011 ("Commencement Date"). Any holding over by Lessee after the expiration of said term shall be deemed a month to month tenancy upon the same terms and conditions in this Lease.

4. Rent. Lessee shall pay the sum of Three Thousand Dollars (\$3,000.00) per month to Lessor as rent. Rent shall be due on the 1st day of each month and considered late, if not received by the 10th day of each month. Lessor and Lessee agree that the rental rate shall remain at \$3,000.00 per month for the first five (5) years (the first 60 months) of the lease. Thereafter, the rental rate shall increase by 3% per annum for the remaining life of this Lease.

5. Use. The Leased Premises shall be used by Lessee for the purpose of installing operating electronic communication equipment by the Riverside County Information Technology Department (RCIT) County Fire and/or County Sheriff. Lessee shall have exclusive possession of the Leased Premises.

6. Utilities. Lessor shall grant any necessary utility easements across the Property to the appropriate utility company, at no cost to either Lessee or the utility company, so long as the easement is reasonably necessary for Lessee's performance of this Lease. Lessee shall be responsible for paying for all utilities it establishes under this Lease.

1 7. Acceptance of Premises. Lessor hereby leases the Premises in its "as-is, where-is"
2 condition, and Lessee shall make all determinations regarding the conditions of the Premises
3 including whether or not it has hazardous substances, whether or not it is suitable for the
4 Lessee's use, whether or not there are any material defects, faults, or issues in any way
5 associated with the condition of the Property or in its use caused by adjoining landowners as
6 all shall be the sole responsibility of Lessee to determine. To the best of Lessor's actual
7 knowledge, without any duty of inquiry, there have been no hazardous material spills or
8 underground fuel storage tanks on the Property, nor does he have knowledge of septic or
9 drain fields or buried wastes on or within the Leased Premises or Property. Lessee, at
10 Lessee's option and sole cost, may conduct a Phase I Hazardous materials study and Lessor
11 agrees to cooperate in completion of such study. Lessor shall inform Lessee of any present or
12 future underground utilities placed by Lessor or Lessor's tenants so that Lessee may protect
13 such improvements during construction and operation. Otherwise, Lessee accepts the Leased
14 Premises "as is" and acknowledges that Lessor has made no representation whatever
15 concerning the fitness of the Leased Premises for the use intended by Lessee. Lessee agrees
16 to keep the Leased Premises free of hazardous materials contamination and shall store and
17 use fuels, lubricants, batteries and other similar materials in a safe and code complaint
18 manner and assumes full responsibilities for such materials use within the Leased Premises.
19 Lessee further agrees to remove any hazardous material contaminant produced by Lessee's
20 operations at the Leased Premises in a legally acceptable manner.

21
22 8. Improvements by Lessee. Upon the full execution of this Lease Lessor's
23 acceptance of Lessee's program of self-insurance as described in Section 9 herein, Lessee
24 shall have the right (but not the obligation) at any time following the full execution of this Lease
25 and prior to the Commencement Date, to enter the Leased Premises for the purpose of
making necessary inspections and engineering surveys (and soil tests where applicable) and
other reasonably necessary tests (collectively "Tests") to determine the suitability of the
Leased Premises for Lessee's Facilities (as defined herein) and for the purpose of preparing
for the construction of Lessee's Facilities. Lessee has the right to construct, maintain, install,
repair and operate on the Leased Premises radio and microwave communications facilities,
including but not limited to, radio frequency transmitting and receiving equipment, batteries,
backup generators, utility lines, transmission lines, radio and microwave frequency transmitting
and receiving antennae and supporting structures and improvements ("Lessee's Facilities") as
shown on Exhibit "A" attached hereto and incorporated herein. In connection therewith,
Lessee has the right to do all work necessary to prepare, add, maintain and alter the Leased
Premises for Lessee's communications operations and to install utility lines and transmission
lines connecting antennas to transmitters and receivers. Lessee shall have the right to install
any warning signs on or about the Leased Premises required by federal, state or local law. All
of Lessee's construction and installation work shall be performed at Lessee's sole cost and
expense and in a good and workmanlike manner in accordance with all laws and regulations
required by any governmental authority or entity.

Any subsequent alterations, improvements or installation of fixtures shall require prior
written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or
delayed, however written notice of such improvement or upgrade shall be provided to Lessor
prior to commencement of construction, and Lessor shall have thirty (30) days after confirmed
receipt thereof, to submit any comments, suggestions, criticisms or questions and any such
improvement or upgrade shall comply with Section 12 and Lessor's reasonable requests

1 related thereto. Lessee may install additional radio or electronic equipment in its structure, on
 2 the Leased Premises or on its tower without consent of the Lessor. All alterations and
 3 improvements made and fixtures installed by Lessee shall remain Lessee's property and may
 4 be removed by Lessee at or prior to the expiration of this Lease; provided, however, that such
 5 removal does not cause injury or damage to the Leased Premises, or in the event it does,
 6 Lessee shall restore the Leased Premises to good condition. Lessee hereby agrees that it has
 7 the obligation to restore the Leased Premises to as good or better condition than it was before
 8 the lease commenced.

9 9. Insurance. Lessee is a local government entity created under the laws of the State
 10 of California, and maintains a program of self-insurance for any third party liability loss.
 11 Lessee shall cause Lessor to be treated as additional insured's under Lessee's self-insurance
 12 program, as if an insurance policy had been issued to Lessee for this Lease, shall maintain its
 13 self-insurance program in full force during the term, and shall provide proof of self-insurance if
 14 requested by Lessor.

15 10. Hold Harmless. Lessee shall indemnify, defend and hold Lessor, harmless from
 16 and against any loss, liability, claim, damage or expense (including attorneys' fees) arising
 17 from or in any manner related to the use or occupancy of the Leased Premises or the access
 18 thereto, except to the extent such loss, liability, claim, damage or expense is caused by the
 19 sole negligence or willful misconduct of the Lessor.

20 11. Option to Terminate. Lessee shall have the right to terminate this Lease with
 21 twelve months advance written notice to Lessor. Upon termination of this Lease, Lessee at its
 22 sole cost shall remove all improvements from the Leased Premises and leave the site free of
 23 debris in as a good a condition as it was before the term of the Lease started.

24 12. Interference. Lessee shall operate the Leased Premises in compliance with all
 25 Federal Communications Commission ("FCC") requirements and in a manner that will not
 cause interference to Lessor or other tenants of the Property. In the event interference occurs
 Lessee agrees to use best efforts to eliminate such interference within a reasonable time
 period.

13 13. Notices. Any notices required or desired to be served by either party upon the
 14 other shall be addressed to the respective parties as set forth below or to such other
 15 addresses as from time to time shall be designated by the respective parties:

16 **Lessee:**

17 County of Riverside
 18 Economic Development Agency
 19 3403 10th Street, Suite 500
 20 Riverside, California 92501

21 **Lessor:**

22 Frank P. Elardi
 23 2780 Mountain Avenue
 24 Upland, CA 91784

25 14. Taxes. Notice is hereby given pursuant to Revenue and Taxation Code section
 107.6 that this Communications Site Lease may create a taxable possessory interest in the
 Leased Premises. If personal property taxes are assessed, Lessee shall pay any portion of
 such taxes directly attributable to Lessee's facilities. Lessee shall pay all real property taxes,
 assessments and deferred taxes on the Property.

1
2 15. Quiet Enjoyment. Lessee hereby covenants that it has reviewed the Property and
3 the general area around it and is fully aware of all operations, uses and easements related
4 thereto; and that the existing condition of the Property is suitable for its use. Lessor
covenants that Lessee shall at all time during the term of this Lease peaceably and quietly
have, hold and enjoy the use of the Leased Premises so long as Lessee shall fully and
faithfully perform the terms and conditions that it is required to perform under this Lease.

5 16. Binding on Successors. The terms and conditions herein contained shall apply to
6 and bind the heirs, successors in interest, executors, administrators, representatives and
assigns all of the parties hereto.

7 17. Severability. The invalidity of any provision in this Lease as determined by a court
8 of competent jurisdiction shall in no way affect the validity of any other provision hereof.

9 18. Venue. Any action at law or in equity brought by either of the parties hereto for the
10 purpose of enforcing a right or rights provided for by this Lease shall be tried in a court of
11 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
waive all provision of law providing for a change of venue in such proceedings to any other
county.

12 19. Attorneys' Fees. In the event of any litigation or arbitration between Lessor and
13 Lessee to enforce any of the provisions of this Lease or any right of either party hereto, the
14 unsuccessful party to such litigation or arbitration agrees to pay to the successful party all
costs and expenses, including reasonable attorney's fees incurred therein by the successful
party, all of which shall be included in and as a part of the judgment rendered in such litigation
or arbitration.

15 20. Entire Lease. This Lease is intended by the parties hereto as a final expression of
16 their understanding with respect to the subject matter hereof and as a complete and exclusive
17 statement of the terms and conditions thereof and supersedes any and all prior and
18 contemporaneous leases, agreements and understandings, oral or written, in connection
therewith. This Lease may be changed or modified only upon the written consent of the
parties hereto.

19 21. Interpretation. The parties hereto have negotiated this Lease at arm's length and
20 with advice of their respective attorneys, and no provision contained herein shall be construed
against either party solely because it prepared this Lease in its executed form.

21 22. Right to Purchase. Lessor shall not mortgage or encumber the Property without
22 the written consent of Lessee, which shall not be unreasonably withheld, conditioned or
delayed.

23 At any time after the fifteenth year of the term of this Lease, Lessee shall have the right
to purchase the Property for the "appraised market value."

24 In the event of a bonafide written offer to purchase from a third party, that is acceptable
25 to Lessor, Lessee shall have the option to purchase the Property at an amount equal to 105%

1 of the offered price, provided Lessee exercises such option to do so within thirty days of
2 receipt of notice from Lessor of such bonafide offer. Lessor agrees to provide reasonable
notice to Lessee of any such written offers to purchase that Lessor is willing to accept.

3 In the event of the death of Frank Paul Elardi, Lessee shall have the option, to be
4 exercised within 180 days of receipt of notice by the successor Lessor of such occurrence, to
purchase the Property for the appraised market value.

5 In the event Lessor and Lessee disagree on the appraised market value, each party may
6 choose their own appraiser and if the value conclusions of the two appraisals are substantially
7 different (defined as a difference of 10% or more), the two appraisers shall agree on a referee
8 (a third appraiser) to review the appraisals and rule on which appraisal is more
appropriate. The cost of the third appraisal shall be split 50-50 between Lessee and Lessor. In
the event the difference between the two appraisals is less than 10%, the purchase price shall
be deemed to be that of the higher appraisal.

9 23. Weed Abatement. Lessee shall be responsible during the term of this Lease for
10 any weed abatement or general cleanup of the Property.

11 ///
12 ///
13 ///

24. Approval. Anything to the contrary notwithstanding, this Lease shall not be binding or effective until its approval and execution by the Chairman of the Board of Supervisors for the County of Riverside.

LESSOR: THE FRANK PAUL ELARDI
SEPARATE PROPERTY TRUST DATED
JULY 1, 2010

By: Frank Paul Elardi
Frank Paul Elardi, Trustee
1-19-11

LESSEE: COUNTY OF RIVERSIDE

By: _____
Bob Buster, Chairman
Board of Supervisors

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:
Pamela J. Walls
County Counsel

By: Synthia M. Gunzel
Synthia M. Gunzel
Deputy County Counsel

JRF:ra
102719
042IT
13.689

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSURED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCEL MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.

MAY 3 0 2006

SEC. 26 35 T. 2S., R. 3W

473-12
12-42

EXHIBIT "A"

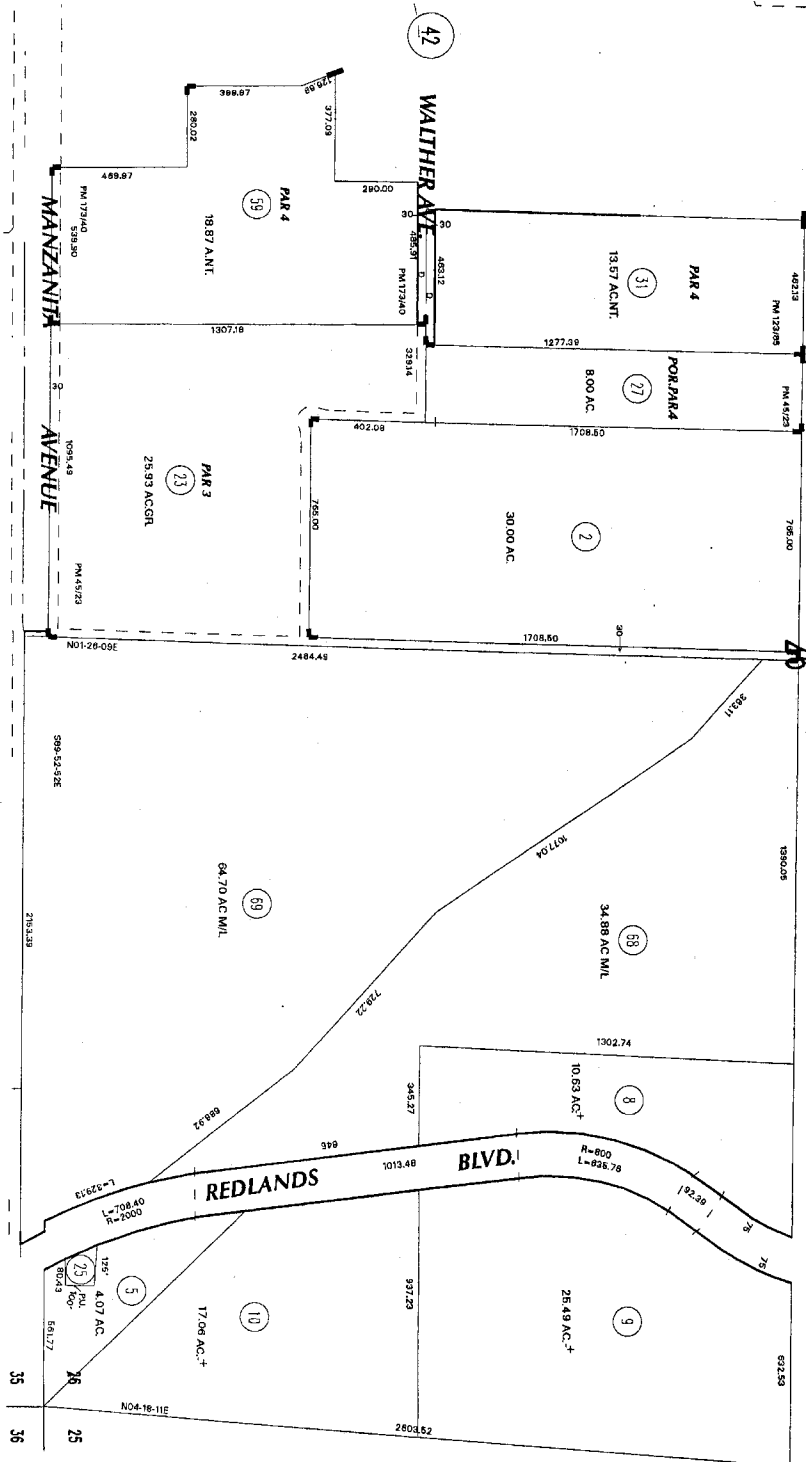
ASSESSOR'S MAP BK473 PG.12
Riverside County, Calif.

COPY

DATA: 6/12/06, 3/5/05, 4/31, 1/7/09
CD: RD 553
LLA 3107

PM 123/85-86 PARCEL MAP NO. 19875
PM 45/23-24 PARCEL MAP NO. 9308
PM 173/40-41 PARCEL MAP NO. 23489

May 2006



BLK#	OLD NUMBER	NEW NUMBER
17/71	5	12,13,16
17/72	7	14,15
17/73	1	17,18
17/74	1	19,20
17/75	18	21,22
17/76	18	23,24
17/77	18	25
17/78	18	26
17/79	18	27
17/80	18	28
17/81	18	29
17/82	18	30
17/83	18	31
17/84	18	32
17/85	18	33
17/86	18	34
17/87	18	35
17/88	18	36
17/89	18	37
17/90	18	38
17/91	18	39
17/92	18	40
17/93	18	41
17/94	18	42
17/95	18	43
17/96	18	44
17/97	18	45
17/98	18	46
17/99	18	47
17/100	18	48
17/101	18	49
17/102	18	50
17/103	18	51
17/104	18	52
17/105	18	53
17/106	18	54
17/107	18	55
17/108	18	56
17/109	18	57
17/110	18	58
17/111	18	59
17/112	18	60
17/113	18	61
17/114	18	62
17/115	18	63
17/116	18	64
17/117	18	65
17/118	18	66
17/119	18	67
17/120	18	68
17/121	18	69
17/122	18	70
17/123	18	71
17/124	18	72
17/125	18	73
17/126	18	74
17/127	18	75
17/128	18	76
17/129	18	77
17/130	18	78
17/131	18	79
17/132	18	80
17/133	18	81
17/134	18	82
17/135	18	83
17/136	18	84
17/137	18	85
17/138	18	86
17/139	18	87
17/140	18	88
17/141	18	89
17/142	18	90
17/143	18	91
17/144	18	92
17/145	18	93
17/146	18	94
17/147	18	95
17/148	18	96
17/149	18	97
17/150	18	98
17/151	18	99
17/152	18	100